MT LEGISLATIVE HISTORY

Chapter 526 1985

Bill (H) 310 S _____ Original bill & hist. ✓C

H. Committee on Judiciary

Hearing Date(s) Feb 04 ✓C
Feb 05 ✓C
_____ ___C
_____ ___C

Date Out Feb 05 ✓C

S. Committee on Judiciary

Hearing Date(s) Mar 11 ✓C
Mar 19 ✓C
Mar 20 ✓C
Mar 21 ✓C

Date Out Mar 21 ✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 310

INTRODUCED BY WALDRON

IN THE HOUSE

January 22, 1985	Introduced and referred to Committee on Judiciary.
January 25, 1985	Fiscal Note requested.
January 29, 1985	Fiscal Note returned.
February 5, 1985	Committee recommend bill do pass as amended. Report adopted.
February 6, 1985	Bill printed and placed on members' desks.
February 7, 1985	Second reading, do pass as amended.
February 8, 1985	Correctly engrossed.
February 9, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

February 11, 1985	Introduced and referred to Committee on Judiciary.
March 22, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Ayes, 47; Noes, 2.
	Returned to House with amendments.

IN THE HOUSE

March 27, 1985	Received from Senate.
April 4, 1985	Second reading, pass consideration.
April 5, 1985	Second reading, amendments concurred in.
April 8, 1985	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 310

INTRODUCED BY Weldon

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ABUSED FAMILY OR HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY RESTRAINING ORDERS; MAKING VIOLATION OF AN ORDER A CRIMINAL OFFENSE; DIRECTING THE ATTORNEY GENERAL TO PREPARE AND DISTRIBUTE FORMS AND INSTRUCTIONS FOR RESTRAINING ORDERS; AMENDING SECTIONS 27-19-201, 27-19-315, 27-19-316, AND 40-4-106, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-19-201, MCA, is amended to read:

"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear that the applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it shall appear during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears the applicant has suffered or may suffer physical abuse ~~by a spouse~~ under the provisions of 40-4-106."

Section 2. Section 27-19-315, MCA, is amended to read:

"27-19-315. When restraining order may be granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or his attorney could be heard in opposition; and

(2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his

INTRODUCED BILL
HB 310

claim that notice should not be required."

Section 3. Section 27-19-316, MCA, is amended to read:

"27-19-316. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must:

(1) be endorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why such injury is irreparable and why the order was granted without notice; and

(4) except as provided in 40-4-106, expire by its terms within such time after entry, not to exceed 10 days, as the court or judge fixes."

Section 4. Section 40-4-106, MCA, is amended to read:

"40-4-106. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and

the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) ordering a party to pay the other party's reasonable attorney fees incurred under this section; and

~~(e)~~(f) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal

separation by filing a verified petition:

(a) alleging physical abuse against the petitioner, including attempting to cause or causing bodily injury or causing the petitioner to engage in involuntary sexual relations by threat or force, by a ~~spouse~~ family or household member; and

(b) requesting ~~injunctive~~ relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208. Persons who may request relief under this subsection include spouses, former spouses, adult persons related by blood or marriage, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208; and

(c) ~~terminates--when--the--final--decree-is-entered-or when-the-petition-for-dissolution--or--legal--separation--is voluntarily--dismissed.~~ when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under [section 8]."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

NEW SECTION. Section 5. Forms -- distribution -- filing. The attorney general shall prepare instructions and petition and order forms necessary for allowing an applicant to obtain a temporary restraining order under 40-4-106. The attorney general shall distribute the restraining order forms to the clerk of the district court in each county and

to justice and municipal courts. The clerk of the district court, justices of the peace, and municipal courts shall make the forms available to the public at no charge, and no filing fee may be charged for a petition or order filed pursuant to 40-4-106 and [section 6].

NEW SECTION. Section 6. Jurisdiction and venue. (1) District courts, municipal courts, and justices' courts have concurrent jurisdiction to hear and issue orders under 40-4-106(3).

(2) The municipal judge or justice of the peace shall, on motion, suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties. From the time of the certification of such pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced therein.

(3) An action brought under 40-4-106(3) may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse.

NEW SECTION. Section 7. Registration of orders. (1) The clerk of court, justice of the peace, or municipal court judge shall, within 24 hours of receiving proof of service of an order under 40-4-106, mail a copy of the order or any extension, modification, or termination thereof along with a copy of the proof of service to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures to ensure that peace officers at the scene of an alleged violation of a protective order are informed of the existence and terms of such order.

NEW SECTION. Section 8. Misdemeanor. (1) A person commits the offense of violation of a protective order if he, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-106.

(2) A person convicted of violation of a protective order shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

NEW SECTION. Section 9. Codification instruction. (1) Sections 5 through 7 are intended to be codified as an integral part of Title 40, chapter 4.

(2) Section 8 is intended to be codified as an integral part of Title 45.

-End-

STATE OF MONTANA

F I S C A L N O T E

REQUEST NO. FNN 175-85

Form BD-15

In compliance with a written request received 01-25 , 19 85 , there is hereby submitted a Fiscal Note for House Bill 310 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation:

House Bill 310 is an act allowing abused family or household members to obtain self-help temporary restraining orders; making violation of an order a criminal offense; directing the Attorney General to prepare and distribute forms and instructions for restraining orders.

Assumptions:

1. It will be necessary to contract with private counsel to develop instructions and forms.
2. Approximately 20,000 sets of instructions and forms will provide a two year supply.
3. A training session will be required for clerks of court to answer general questions from the public.

Fiscal Impact:

General Fund:	FY 1986	FY 1987
Operating Expenditures	$ 10,500	-0-

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 29, 1985

HB 310

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON-CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON CURRED IN DATE
HB 276	1/19/85	2/14/85 2/15/85	2/15/85	2/15/85					
HB 286	1/19/85	1/24/85	1/24/85			1/24/85			
HB 310	1/22/85	2/4/85 2/5/85	2/5/85			2/5/85			
HB 313	1/22/85	2/11/85	(TABLED 2/11/85)						
HB 323	1/22/85	2/5/85 2/4/85	2/5/85			2/5/85			
HB 332	1/22/85	2/5/85	2/5/85			2/5/85			
HB 333	1/22/85	2/5/85	2/5/85	2/5/85					
HB 335	1/22/85	2/5/85	2/5/85			2/5/85			
HB 340	1/22/85	2/5/85	2/5/85			2/5/85			
HB 341	1/22/85	2/4/85 2/5/85	2/5/85			2/5/85			
HB 352	1/22/85	2/5/85	2/5/85	2/5/85					
HB 353	1/22/85	2/6/85	2/8/85	2/8/85					
HB 357	1/22/85	2/6/85 2/14/85	2/14/85		2/14/85 (AS AMENDED)				
HB 363	1/22/85	2/12/85 2/20/85	2/21/85		2/20/85	AS AMENDED			
HB 366	1/22/85	2/14/85 2/16/85	2/16/85		2/16/85				
HB 370	1/23/85	1/31/85	1/31/85		1/31/85				

2-20-85

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 4, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, February 4, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 310: Rep. Steve Waldron, chief sponsor of this bill, appeared before the committee and offered testimony. He said that this bill will provide for a self-help temporary restraining order (TRO). It also makes the violation of the TRO a criminal misdemeanor. He said that currently under state law, the judge can issue a TRO, but the police have little recourse because it is a civil matter. Presently, this procedure is providing very little protection especially in battered spousal situations. Also, it is very expensive to hire a lawyer in order to obtain the TRO. Under this bill, a TRO may be acquired without having to hire an attorney. Rep. Waldron stated that the state of Oregon has a similar type of law now in effect which has been working well.

Caryl Wickes Borchers, executive director of the Great Falls Mercy Home, and also representing the Montana Coalition Against Domestic Violence, testified in support of this bill. She feels that the "self help" restraining order would allow a more effective tool to keep the family violence from escalating and to work with our clients, especially in the rural areas where people don't have access to a long term shelter or safe homes. A copy of her testimony was marked as Exhibit A and attached.

Cathy St. John, houseparent/counselor/advocate at the Mercy Home in Great Falls, appeared and offered testimony as a proponent for this bill. A copy of her testimony was marked as Exhibit B.

Rosemary Keller testified in support of HB 310. A copy of her testimony is attached hereto as Exhibit C.

Julie Ferguson appeared and offered testimony in support of HB 310, and a copy of that statement is attached hereto as Exhibit D.

Gail Kline, representing the Women's Lobbyist Fund, stated that this bill is needed to provide dignity and equal protection for abused family or household members. A copy of her testimony is attached hereto as Exhibit E.

Bob Rowe, appearing on behalf of the Missoula Legal Services Association, testified in support of the bill. He stated that this bill creates a very simple self help procedure whereby a person can obtain a TRO. Mr. Rowe said that he is familiar with the TRO forms and said they are very intelligible and would be understood by most people.

Holly Franz, representing the Women's Law Caucus from the University of Montana Law School, testified in support of this bill. She stated that the primary purpose of this bill is to protect victims of domestic violence through greater availability and increased enforcement of temporary restraining orders. She further informed members that over 20 state, including Alaska, Arizona, California, Utah, Oregon and Washington, have adopted legislation similar to HB 310. Each year more states recognize the need to protect domestic violence victims through TRO's. She also stated that the United States Attorney General's Task Force on Domestic Violence, in its September 1984 report, strongly endorsed the concept of HB 310. A copy of her testimony was marked as Exhibit F and is attached hereto.

Mary Gallagher also from the Women's Law Caucus in Missoula, offered support for HB 310.

Leonore F. Taliaferro, program counselor for Domestic Violence/Family Protection, briefly testified in support of HB 310. A copy of her testimony was marked as Exhibit G and is attached hereto.

Mike McGrath, Lewis and Clark County Attorney, testified in support of this bill. He supports this bill principally because of the enforcement provision of the bill. It would make it a crime -- a misdemeanor -- to violate the provisions of the TRO. He feels that passage of this bill will be very helpful to the law enforcers at the scene.

There being no further proponents or opponents, Rep. Waldron, closed. He pointed out that this bill also includes those persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition. The floor was opened to questioning at this time.

Rep. Eudaily wondered if the title of the bill wasn't being expanded too much when the language on page 5 subsections (a) and (b) lines 12-16 was included. Rep. Waldron said that perhaps that particular language should have been included in the title, but the Legislative Council drafted the bill as it presently is.

In response to a question asked, Rep. Waldron stated that involuntary sexual relations is a form of abuse and should be included in the bill.

Rep. Keyser feels the language on page 5, line 2 is very broad. In response, Holly Franz stated that this language came from the misdemeanor assault statute.

In response to another question by Rep. Keyser, Holly said that the purpose of subsection (e) on page 4 is to increase access to temporary restraining orders. In situations where the victim wants to get an attorney but cannot afford the attorney, she then doesn't want to go forward with the case.

Rep. Keyser wanted to know where in this bill does it show which party is able to recover damages and which party has the right to reasonable attorney fees other than the new added language. Holly said that in the Title 40 of Family Law 40-4-110, costs for attorney fees are already available for violations of the chapter.

Rep. Krueger referred to the language on page 5, line 2. He asked Bob Rowe if by adding the language including physical abuse or threatening physical abuse against a petitioner and family or household as a basis for a restraining order would meet his needs in the bill. It basically would include only the area of bodily injury. In Rep. Krueger's opinion, the area dealing with sexual relations would be included as well. Mr. Rowe stated that better language might be included but not limited to. Mr. Rowe said there are definitely judges in Montana who would be uncomfortable to issue a TRO on the basis of a threat alone.

In response to a question from Rep. O'Hara, Bob Rowe stated that a TRO is usually served with the divorce decree. Rep. O'Hara asked what the attorney fees usually run when a TRO is requested. Mr. Rowe answered by saying that a rock bottom price for a divorce and restraining order would be approximately $300 in addition to filing fees. Again Mr. Rowe stated that he feels it is important that there not be a cost involved when a TRO is requested.

Rep. Montayne spoke in favor of the bill. He feels it is desperately needed.

Rep. Addy wanted to know why the TRO's would be extended to 20 days instead of the usual 10 days. Mr. Rowe said that the 10 days period is an extremely short time to get the respondent served and to set up a court hearing.

Rep. Addy also stated his concern that perhaps they would be losing more than would be gained with this bill. Rep. Waldron responded by saying that this bill is an effective means for TRO enforcement. He feels that the current TRO procedure does not provide the protection.

In response to a question from Rep. Mercer, Mr. McGrath does not feel that passage of this bill will create more domestic violence. Rep. Waldron also pointed out that the bill does not provide that city judges could issue TRO's. He does, however, feel that the justices of the peace should be given the privilege of doing so.

CONSIDERATION OF HOUSE BILL NO. 341: Rep. Ron Miller, sponsor of this bill, testified before the committee. He stated that this is an act to provide civil liability for a person who wrongfully stops payment on a check, draft or an order for the payment of money. He stated that the Montana Automobile Dealers Association informed him that this is a very severe problem.

George Allen, representing the Montana Retail Association, informed members that the bill passed last session dealing with bad checks had included in it some of the same language as this bill does. This bill is a supplement for a person who deliberately stops payment on a check.

Blake Wordahl, representing the Montana Hardware and Implement Association, testified in support of the bill. He informed the committee that Rep. Bergene's bill which passed last session has definitely helped and he feels this bill will be beneficial as well.

Bob Likewise, representing the Montana Pharmaceutical Association, wished to go on record as supporting this bill.

Also testifying in support of this bill was Tom Harrison.

There being no further proponents or opponents, Rep. Miller closed. The floor was opened up for questioning.

Rep. Addy wanted to know what happens to the guy with a "good faith" dispute. Mr. Harrison thinks the defenses are still present in the statutes. Mr. Harrison said this bill would provide a little "teeth" in that it would penalize the person who wrongfully stops payment of a check.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/4/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

February 2, 1985

EXHIBIT A
HB 310
2/4/85

Capitol Station
Helena, Montana 59601

Dear Legislators,

I am writing to ask you to support the continuation of additional funding of the Domest[ic] Violence Grant Program with the 4% General Fund Monies in the Executive Budget over and abo[ve] the Marriage License Fee monies that we have totally funded the Domestic Violence Grant Prog[ram] with since July of 1979.

In February of 1977 the Montana Legislature started working with us to start solving the problem of Domestic Violence by a Senate-House Joint Resolution which mandated Crime Control to study Spouse Abuse in Montana. That Study was made and called 'SPOUSE BATTERING IN MONTAN[A]'. In April 1978, A STATE TASK FORCE ON SPOUSE ABUSE was established to read and study 'THE STUDY' and make recommendations to the 1979 Legislature. In addition to the Legislation that has be[en] passed by you in the last 4 Legislatures, the Montana Task Force on Spouse Abuse has been abl[e] to have written a STATE TRAINING PACKET ON SPOUSE ABUSE developed for Mental Health Professional and Clergy; a SPOUSE ABUSE PROTOCAL in the 61 State Hospitals; and a RAPE PROTOCAL in the 61 State Hospitals; a booklet with the STATEWIDE SERVICES entitled 'BATTERED WOMEN RIGHTS AND OPTIONS IN MONTANA'; do COMMUNITY INTERVENTION WORKSHOPS sponsered by the LAW ENFORCEMENT ACADE[MY] plus spearhead GRASS ROOTS EDUCATION on the problem in Communities; do State Workshops in TRAINING ADVOCATES; training in the use of the STATE TRAINING PACKET; and a workshop in the latest research on the BATTERER and the CONTINUING CYCLE of DOMESTIC VIOLENCE.
In October 1982, the MONTANA COALITION AGAINST DOMESTIC VIOLENCE was formed and incorporated. We are continuing the GRASS ROOTS EDUCATION statewide(I do 60 Educational workshops and talks each year)plus have continued our State Workshops such as: Dr. Lenore Walker's latest RESEARC[H] on the BATTERED WOMEN and BATTERER; the"RELIGIOUS RESPONSE TO DOMESTIC VIOLENCE;"and THE BATTERERS PERSPECTIVE" at our Montana Coalition Against Domestic Violence State meetings.

The Great Falls Mercy Home, Inc. opened in May 1977, our first Shelter in Montana and on[e] of 30 in the United States addressing the problem of Spouse Abuse. We have been able to give technical assistance and spearhead 6 other Shelters in the State and 12 Spouse Abuse Task Force[s] who have Safe Homes (private homes for 3 day intervention) and network with the Shelters i[f] needed, in addition to having grass roots education and outreach to all parts of the State. Listed below are recent updated services and educational outreach.*asterisk denotes Shelters.

Hi-Line Help for Abused Spouses has done education and outreach to:Joplin, Box Elder,Ft. Belnap Reservation, Rocky Boy Reservation, Chinook, Hingham, Kremlin, Rudyard,State Worksh[op]

**GreatFalls Mercy Home has done education and outreach to: Belt(trained an outreach Group Facilitator), Cascade, Stockett, Ulm, Vaughn, Sand Coulee, Choteau, Fort Benton, Univers[ity] of Montana (2 classes), Browning, Shelby, CutBank, Conrad, Lewistown, State Workshop.

** Missoula BWShelter has done outreach and education to: Stevensville, Hot Springs, Hamilton, Darby, Seeley Lake, Ronan, Frenchtown, Milltown, Potomac.

Kalispell Rape Action Line has done education and outreach to: Bigfork, Whitefish, Columb[ia] Falls, Olney, Pablo-Ronan, Dayton, Libby.

Glasgow, Glendive and Miles City have had a 17 County State Grant until this past year when they did individual Grants but they have done outreach to: Sidney and Glasgow did outreach to Richland, Nashua, Malta Glendivedid outreach and education to Wibaux, Terry, and Circle Whitehall

** Helena Friendship Center has done education and outreach to Boulder, Townsend, Augusta a[nd]

** Bozeman has done education and outreach to: Belgrade, Ennis, Livingston, West Yellowstone, Big Sky, White Sulpher Springs, State Workshop.

Dillon has done education and outreach to: Melrose, Sheridan, and Lima

** Butte Safe Space has done education and outreach to:Whitehall, Twin Bridges, Sheridan, Anaconda, Deer Lodge.

**Pablo-Ronan Shelter supported by some Salish-Kootenai Monies opened in 1982 in Pablo-Polso[n], Ronan Area.

**Billings Shelter did outreach and education to: Ft. Belnap Reservation, Cheyenne Reservati[on] Colstrip-Victims of Violence Task Force Crow Reservation and Colstrip.

Lewistown- Spouse Abuse Emergency Services (SAVES)

Libby - LincolnCt.Womens Help Line for Eureka and Troy

Twin Bridges- has a 24 hr.Crisis Line/Information

Glasgow - Jefferson Co.Spouse Abuse Program

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February 4, 1985

Dear Legislators,

I am here today to support House Bill 310- Self-Help Temporary Restraining Orders, as a representative from the Montana Coalition Against Domestic Violence.

We feel a "Self Help" Restraining Order would allow a more effective tool to keep the family violence from escalating and to work with our clients, especially in the rural areas where people don't have access to a long term shelter or safe homes.

Currently, I have a client who got a Temporary Restraining Order and he broke it and came into her home with a shotgun. She has to go to court next Tuesday, regarding this violation of the "TRO", instead of being able to have an immediate arrest, since it's a Civil Writ instead of a criminal offense. She came into the shelter after this incident, where she would be safe.

Nationally, there are more homicides in family violence than any other way. In Cascade County we have never had any homicides due to Spouse Abuse, in the course of seven years. However, we were fortunate enough to have a shelter to take them out of the crisis situation. We need to give some other options to other parts of the state such as a "Self Help Restraining Order."

I am very proud of the ways in which our "grass roots" plans have developed into strong programs of human services and education, through the cooperation of the past four legislatures, the past two governors, and the Department of Social and Rehabilitation Services in the State of Montana. Without this cooperation, we would not have been able to serve the victims of Domestic Violence as we have. We hope for your continued support and assistance in the future, to further expand the programs which we have begun, and to create those needed to assist the victims of this crime.

Sincerely,

Caryl Wickes Borchers

Caryl Wickes Borchers

Executive Director, Great Falls Mercy Home
Chair, Montana State Task Force on Spouse Abuse
(1978-1982)
Rep., Montana Coalition Against Domestic Violenc

EXHIBIT B
HB 310
2/4/85

February 4, 1985

Dear Legislators,

I am a houseparent/counselor/advocate at the Mercy Home, a shelter for battered women and their children, in Great Falls, Montana. I come to you today to urge your support for some important legislation which directly applies to those whom I serve.

House Bill 310 has been proposed to allow family and household members to obtain temporary restraining orders without cost or attorney services. Also, it would give criminal status to the violation of such an order, warranting arrest.

For the many victims of domestic abuse who manage to establish themselves free from their batterers, the nightmare does not end. Often, the batterer discovers where the woman is living and continues to harass her verbally, physically, even sexually. Why should anyone have to pay for peace and safety? Too many times we've had to tell women who come to us, penniless, that they cannot afford a temporary restraining order. For those able to afford them, the difficulty in enforcing them reduces their effectiveness.

In domestic abuse, as in all crimes, time is a key factor. By giving immediate criminal status to the violation of a restraining order, its effectiveness increases, and perhaps those served with such an order will take it more seriously.

In working with battered women, I have had to leave many questions unanswered. One such question is "Why do I have to leave my home? I haven't done anything! He should be the one to leave." Since these women need to get out of an abusive situation, as of now her only choice is to leave. She comes to us with only the clothes on her back, her children the same. Later attempts to enter her home for personal belongings is potentially dangerous and often requires police protection. By allowing the batterer to remain in the home, we are condoning his behavior. Domestic abuse is a crime and should be seen as such, rather than be minimized to a "marital problem." No one has the right to shatter another's peace.

I have worked with battered women since August 1984. I have been woken at 3:30 a.m. to answer crisis calls. I have dealt with hysterical women over the phone who cry," But the police won't help me!" I have watched little children act out the violent behavior they have seen--"And then he did this and this..." followed by kicking, punching, pulling and pushing motions. I have seen enough, and yet I shall see more.

In conclusion, I urge your support for House Bill 310, as well as your support for continued funding for programs for the victims of domestic violence, such as the Mercy Home. While shelters such as ours can educate and provide safety for the victim, when shall we begin to address the criminal?

Recently, I had a young woman and her son in our office. She fled from her hometown, leaving family, friends and personal possessions behind, to escape a very dangerously abusive ex-boyfriend. Her decision to flee was not one of choice; for safety, it was her only option. Now alone in a new city, not knowing anyone, missing her family and friends, I sat with her as she cried over her situation. "It's so unfair. I can't even live where I want to live. All because of one person."

Your support, please.

Sincerely,

Cathy St. John

EXHIBIT C
2/4/85
HB 310

February 4, 1985

Dear Legislators,

I had a need for a restraining order on my spouse in August '84. Luckily, I had a job and was able to pay an attorney for one, but even so, it still took two weeks to obtain. Can you imagine how long 2 weeks is when you live in fear of someone? I had to continue working to keep food in my children's mouths. I could not hide. My bosses received threatening phone calls in the office, and at their homes, at 2 and 3 in the morning; their wives were subjected to this also. My female co-workers also feared my husband, as he would enter the office mid-morning and threaten them if I were not around. The security men were alerted to this, but my husband was seen lurking in the the bushes where I work and hiding behind cars close to where I had parked mine.

I was subjected to his shouting obscenities at me as I walked with colleagues across the parking lot and people I work for were accused of having affairs with me, and threatened by my husband. He bragged about carryine a gun in the car, threatening to shoot me and any man that might be walking out of work with me. Since I work in a place with over 1,200 employees, I was terrified to walk out alone and even more fearful that someone else might be hurt by this maniac.

We were married five years ago in England. He was charming, attentive, good looking, and always a gentleman around my family. He had been married before, but told me his wife had "run off to Holland" with their two children. I had neither the sense nor initiative at the time, to check this out. His excuse for getting drunk was because he missed his children so. I sought to resolve that by having his child, now a beautiful four-year-old girl.

We came to the States when she was 4 months old. I sold my home in England for £18,000($45,000). I had only a £5,000 ($12,500) loan on it. My car and all my furniture were paid for and I had no other debts to pay. I sold my car and all my appliances to follow the man I loved to Montana, where I knew no one and had no relatives. I brought Waterford crystal, china, antiques and other items of great worth with me. When I got to Malstrom Air Force Base I paid cash for all the carpets throughout our home and cash for all new appliances.

By summer '82, I realized that my husband had a serious drinking/drug problem. He'd go to work at 4am, come home at 1pm and start drinking. This would continue all day and night until he blacked out. He totally refused to discuss his lifestyles or problems, and refused to admit he had a problem. He disappeared for 2-3 days at a time, started fires in our home and couldn't remember them the next day. When I went to the base chaplains, his commander, and base psychiatrists, all they did was put him on an outpatient program in January '83. He managed to stay dry for some time, but in summer '83, was accepted for an overseas assignment which required special clearance. He left in November '83 and his family met him at JFK airport, so drunk he had to be helped off the plane. They phoned me to see how long he had been drinking and to what extent.

He returned in May '84 and within 2 weeks his behavior went from normal to bizarre, nervous and edgy. I realized he needed to drink again. He taped all our phone calls, spent long hours in the basement, missed meals. A month later, his moods deepened and darkened. He had no time for his darling, bubbly, blonde 3-year-old daughter. Suddenly, instead of just hearing voices on the phone tapes, he heard "extra voices," voices which he concluded were those of the men I was having affairs with.

I work full time and always arrived home within 5 minutes of punching out. I never went out evenings and when I shopped I always invited my husband along and took my daughter. I never answered the phone when he was home so he could not accuse me of lying when it was a wrong number. I called his family for help. They advised me to go to the Base Chaplain, which I did. With his help, and with that of the commander, I got him into psychiatric help, but only on an outpatient basis.

The final blow came when after all weekend of his verbal abuse, pinning me down in chairs, preventing me from leaving, accusing the children of lying, at 4am Monday morning he dragged me from my bed, in front of the children, and tried to strangle me.

I called the base Chaplain at home, waking him up, and he advised me to go to the Mercy Home in Great Falls.

Since then, I have asked myself a thousand times, what would have happened to the four of us (myself and three children), had there been no Mercy Home? Would friends have taken us in, knowing this man's behavior traits? Yes, I needed an immediate restraining order for my children, as well as for myself.

While gone, my husband had taken my bank cards and credit cards from my billfold. My credit union told me my name had been taken off the account and I could not even get my own wages that had been direct deposited a few days earlier. I had no money for food, and all I owned was in the house. I had to move into low income housing and receive a care package of food from the Mercy Home to survive.

Although I got a restraining order, child support and an order to return a few basic items of furniture, my problems were far from over. My husband continually broke the restraining order, called us at all hours of the night from bars, as well as gave my phone number to other drunks who called and threatened me at 3am. He'd show up at my apartment, and I'd call the police, who told me "But, we can't arrest him." "Why not?" "But, you're MARRIED!"

Here I am, living across town from him, forced from my home and all I've worked for for 20 years because of his brutality/drunkenness and yet, he is outside of the law because we have a marriage license. I never realized what I was signing away back in 1980 when I promised to love and cherish this man. We pay our taxes to be protected and safe in our homes, but there seems to be a loophole somewhere in the law's framework that allows a person such behavior.

Where I'm from in England, when a person has a restraining order, you call the police and they arrest the violator. You both go before the judge within 24 hours, and he makes a decision, usually 2 days in jail for first offenses, up to 30 days for further offenses. It's effective, very effective, and very few ever break it once and rarely come back for more after cooling off in a cell. But here I am, having paid $200 for one, it's 3am and I've my 3-year-old daughter clinging to me, while the officer tells me he can't make an arrest.

I had to get the restraining order to try to prevent my spouse from selling, hiding or disposing of my hard earned possessions. Now, six months from the day we were forced out of our beautiful home, my elder son still sleeps on a mattress on the floor, my daughter and I share both a bed and a room. My husband took all the savings in our three accounts, refuses to sell the house or turn over the items I requested in the court. He is behind in all the bills, is in bars every night, while I have had to change my phone numbers and my lifestyle, but yes, I have a restraining order!

We certainly need an "instant" restraining order that's easy to obtain for people on a small income, but much more importantly, we need it to be effective! My husband is laughing at your court system--he can blatantly defy what is ordered and get away with it.

With the influx of wives and children such as myself to Montana (courtesy of the Air Force), this state definitely needs "Do-it-Yourself Restraining Orders," and shelters where they can be safe and begin to restructure their lives. It is only through awareness, education and the law, that we will overcome behavior such as my husband's. This education needs to begin in schools where children, already marred by the scenes witnessed at home, can learn this is not normal behavior, and yes, we do live in a country that is home for the free and the brave, not run by those we should be afraid to go home to each night. Please, Montana, pass this bill without question, to protect your most cherished asset, your children and families.

It is long overdue.

Sincerely,

Rosemary Keller.

Dear Legislators,

"Do-it-yourself" restraining orders are needed because of the cost involved in issuing them now. A lot of people in dangerous situations cannot afford to issue a restraining order so are left vulnerable. Is a person in danger required to remain there solely on the issue of finances? That's what happens today. That is why "Do-it-yourself" restraining orders are needed.

I, myself, never obtained a restraining order due to the cost. I left a home my spouse and I were purchasing together, my possessions and those of my children to enter a shelter. I took only a few clothes and some items that were special to me. While I stayed at the shelter, there were several times My spouse threatened to sell or dispose of what I had left there. Had I had a restraining order, my children and I might have been able to remain in our home.

Another crucial reason for the "Do-it-yourself" restraining order is so many victims do not have immediate access to a shelter as I did. If they have no safe place to go, and no finances available to issue a restraining order, they have little choice but to remain in the situation, no matter how dangerous it is to her and her family.

Sincerely,

Julie K Ferguson

EXHIBIT E
2/4/85
HB 310

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

February 4, 1985

Testimony of the Women's Lobbyist Fund by Gail Kline, before the House Judiciary Committee on HB 310

Mr. Chairman and other members of the Committee:

I am Gail Kline representing the Women's Lobbyist Fund (WLF) and am speaking in favor of this bill.

What we must keep in mind is our State Constitution, Section 4, which says, "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."

HB 310 is needed to provide that dignity and equal protection for abused family or household members.

WLF urges you to pass HB 310.

Thank you.

Testimony of Holly Franz
of the Women's Law Caucus,
University of Montana Law School,
IN SUPPORT OF HB 310

I am here today in support of HB 310. The primary purpose of this bill is to protect victims of domestic violence through greater availability and increased enforcement of temporary restraining orders.

Over 20 states, including Alaska, Arizona, California, Utah, Oregon and Washington, have adopted legislation similar to HB 310. Each year more states recognize the need to protect domestic violence victims through temporary restraining orders,

The United States Attorney General's Task Force on Domestic Violence, in its September 1984 report, strongly endorsed the concept of HB 310. The Task Force recommended that simple, inexpensive restraining order forms, which can be completed by the victim without an attorney, should be available at all courtrooms. The Task Force also recommended that law enforcement agencies maintain a current file of temporary restraining orders to inform police officers at the scene of a domestic violence dispute of the existence of a restraining order. Without such information, the police cannot appropriately intervene and provide protection to the victim. The Task Force also recommended that violations of a restraining order be punished as a criminal offense. Only when the offender knows that his actions are subject to immediate arrest and further prosecution will the protective order be an effective deterrent to abuse and provide the intended relief and security to the victim.

I want to specifically address section 6 of HB 310 which establishes jurisdiction and venue for temporary restraining orders. Montana is a large rural state where a single district judge often covers hundreds of miles within his or her judicial district. This creates a serious problem for victims who need the immediate emergency protection of a temporary restraining order. Victims often escape their homes with little more than the clothes on their back and without money or transportation. Many victims, living in rural areas without available district judges, may be denied the emergency protection of a temporary restraining order.

HB 310 addresses this problem by allowing justices of the peace and municipal judges to issue domestic violence restraining orders. These judges already have the expertise to handle domestic violence cases. Justice and municipal courts currently hear the majority of misdemeanor domestic assault cases. A judge who can punish an offender after a violent act should also be able to prevent that violence. A victim should not have to be battered before she can turn to the courts for help.

Section 6 of HB 310 also addresses venue by allowing the victim to petition for a temporary restraining order in the county in which either party resides or in which the violence occurred. Many times domestic violence victims flee their homes to hide with friends or family. These victims are entitled to emergency protection without endangering their lives by returning to the abuser's hometown. If the alleged abuser feels he cannot get a fair hearing or the county chosen is inconvenient for witnesses, he can petition to change the venue. In the meantime, the victim's access to emergency relief is not denied.

EXHIBIT G

Friendship Center of Helena, Inc. Jill Kennedy, Director 442-600
"Maybe We Can Help You . . . Give Us a Try"
1503 Gallatin
Helena, Montana 59

February 2, 1985

TO: House Judiciary Committee Members

SUBJECT: HOUSE BILL 310

The Friendship Center, its staff, and its clients recommend strongly that you support the purpose of HB 310, and vote unanimously to pass this bill.

The Friendship Center provides emergency shelter to victims of family violence, and recognizes the need to strengthen laws which will reduce continued abuse to victims. Fear of retaliation and continued battering is one of the primary reasons why so many battered spouses and children do not escape the situation sooner.

Immediate protection by speeding up the process of obtaining a restraining order is one means of providing safety to the victims. It is recognized that not all abusers abide by the restrictions of a restraining order. However, one that can be filed quickly by the victims, does allow the law enforcement personnel to act more quickly when a violation of that order occurs.

The passage of this bill would help to prevent further and continued physical and mental abuses to the victims of violence and, in some cases, save lives.

If one has any real knowledge of the brutality experienced by the families of abusers, and the difficulty of assuring that the abuse will not be repeated would not hesitate to vote yes on HB 310. Please vote to pass HB 310.

Thank you for your consideration.

Sincerely yours,

Lenore F. Taliaferro
Program Counselor
Domestic Violence/Family Protection

Jill Kennedy
Executive Director

State of Montana Eleventh Judicial District

POST OFFICE BOX 839 KALISPELL, MONTANA 59901 755-5300 EXT. 221

MICHAEL H. KEEDY
JUDGE OF THE DISTRICT COURT

ROBERT G. MEERKATZ
COURT REPORTER

January 4, 1985

Ms. Gail Leonard
c/o N.O.W.
P.O. Box 2604
Kalispell, MT 59901

Re: Spousal Immunity

Dear Ms. Leonard:

Thanks very much again for speaking with me this afternoon about legislation which Representative Mary Ellen Connelly has agreed to sponsor in the upcoming legislative session. As you know, this bill, a draft of which is enclosed for your reference, would soften substantially the so-called "spousal immunity privilege" now provided in Montana's laws. Its principal effect would be to allow a witness spouse (rather than the party spouse) to invoke the privilege, or not, as he or she chose in individual situations, and to abolish the privilege with respect to defendant spouses in criminal prosecutions.

I believe the effect of the bill is reasonably self-explanatory; however, I could well imagine that some or most members of N.O.W. would appreciate a better description of the rationale for it than you may now have. With that in mind, I should explain that the doctrines giving rise to today's statutory "privilege" developed years ago, as a part of the common law, in which it was taken for granted that a woman's character, spirit and personality were absorbed into those of her husband when she married, so that, in effect, she became "one" with her mate, losing not only her independence but her individualism. Then, as now, in criminal cases a defendant could not be obliged against his wishes or better judgment to incriminate himself; therefore, the thinking was that a man's wife, as little more than an extension of his own person, could not be called upon to testify against him, over his objection. Thus the origin of spousal immunity, or the so-called "spousal privilege."

More recently, courts and legislatures have reasoned that the privacy of one's communications to a spouse ought to be honored, and the sanctity of one's marital relationship

B

preserved, even if doing so might require the exclusion of testimony by one spouse against the other. That is, it was considered more important to protect the value and integrity of a marriage than to be able to ascertain all of the facts in a civil or criminal dispute.

However, supporters of this bill and similar measures in the past to modify the present-day privilege would argue that it ought to be the witness's to invoke, or not, as s/he chooses. In that way, if the sanctity of a particular marriage and the privacy of communications between the spouses to it are really worth protecting, the witness can call upon the privilege; but, if the witness has determined that his or her testimony is more important than considerations of privacy, s/he ought to be given the opportunity to testify, apart from the other spouse's wishes. In that case, as you can see, the privacy of one's marriage relationship would be secondary to the need to get at the truth, and properly so.

Furthermore, as you can see from the bill draft, this proposal would make the privilege unavailable altogether in criminal prosecutions, on the theory that in cases of overriding public importance, the people's dependence upon the truth ought be put above considerations of marital harmony, in all cases.

In short, that is what this bill draft would provide, for the foregoing reasons. If you'd like to discuss the idea in better detail before your meeting on Monday night, please just give me a call at your convenience, at my office (755-5300, ext. 221) or home (257-4031). In the meantime, I appreciate your interest in this matter, and the potential for your and N.O.W.'s support. Thank you.

Very truly yours,

Michael H. Keedy
District Judge

MHK/cs

cc: Representative Mary Ellen Connelly, c/o Capitol Station, Helena, MT 59620

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EXHIBIT H-1
2/4/85
HB 310

Dear Representative,

I feel that the self-made restraining order would benefit both men and women. It would especially be beneficial to middle-and low-income spouses. I was low-income myself.

I experienced fear, abuse, and assaults as I could not afford $800.00 for the lawyer to obtain me a restraining order. I had called the police several times, and was told that they had no authority without a restraining order against my spouse. Also my husband kicked my daughter (4 months old) and I out of our home, took my vehicle, and sold most of my possessions.

Therefore I suffered numerous beatings before I could afford to pay for a divorce.

Sincerely,

A very concerned Spouse

Dear Montana Legislature,

I am writing in reference to shelters. I am currently staying at the Mercy Home. I am extremely grateful that there was a place and people to turn to . It is a terrifying feeling when a person has no place to go. Especially after being abused. Life is difficult at times and it is extremely more difficult when your spouse or someone you love is threatening your life or the life of your child. A person needs their own time and solitude to be able to think over their situation and perhaps take action. This is what I feel the Mercy Home provides.

I am also concerned with the first bill, which states that the batterer is to be arrested automatically if it appears there has been abuse toward their spouse or mate. This takes alot of pressure away from the victim. Plus, it may give officers a less frustrated feeling toward these sort of situations. It might even make a batterer think twice before doing something he may later regret.

As for the temporary restraining order; I feel it is extremely important for punishment to be a bit harsher. This is so the batterer will take the TRO seriously. A victim is usually pushed to the limit before obtaining these. Once the victim should receive one, they should at least be able to feel that the police will help as much as possible, Also being able to obtain an order without an attorney and at no cost would be ideal. The majority of women usually are in a financial bind or not even married to the batterer. This makes it almost impossible to obtain a TRO.

Please consider the proposals presented with thought and care.

Thank you.

Karen

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To whom it may concern

I've been married to you, finally after we got married it became violent the beating started out not real bad in the beginning he'd hit me a couple times, then he would say he was sorry and promised he wouldn't ever do it again, but as time went on the beatings got worse and he criticized me constantly, I felt like it was something I did wrong, he'd get mad at me for little things like dinner being a few minutes late or the kids crying to much or one thing being out of place in the house. Finally I stopped blaming myself and I did everything I could to try to make him happy but the beating just got worse, he always hit me on the face next then he would attack

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pushing me around, hit
threw me on the floor
and he'd grab me and
just keep pushing me, and
he'd choke me, he'd throw
me outside and kick me
until I couldn't move, I
left him several times but
he always talked me back
into the relationship, until
2 wks ago everything was
going fine ~~and~~ but his
temper was getting bad
again and I knew that if
I didn't get out of there
that I was going to get
beat again, just 2 weeks
ago I left he beat me
and my sister and room
mate were there and they
tried to save the house
& they got ~~them~~ beat by
him also, they both had
assault charges against
him so he was put on
jail but he was out of

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jail within an hour after
he was picked up. That
time he also talked me
back into the marriage.
I can remember one time
he held a gun in his
hand with my daughter
sitting on his lap, I still
shake when I think about
that, the police were called
several times because of
his violence towards me
but he was never arrested
because of hurting me.
Every time he would
drink which was almost
every night around the
end he would yell at
me and call me names,
every time he would
beat me I'd have to lie
for him or I'd get beat
all over again, I began
to hate myself for letting
him get away with

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me lie for him. I felt
lost and lonely, I stuck
with the marriage because
I thought he could change
but now I know different
I know it won't change,
I've lost all of the feelings
I ever had for him. I
got tired of living every
day with the fear that
I was going to get hit
again.

He left me and I
like myself again, I don't
have to feel scared of him
any more, I'm in the
process of a divorce, I don't
worry about my babies
any more, my oldest daughter
didn't belong to him and
he would yell at her
constantly he never really
physically beat her but the
kid was I was always
scared that if he got

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mad and he wasn't there
for him to hit that
he would hit them.
I'm glad to be out of
the situation, and I
won't ever go back.
My sister and her
roomate filed charges against
him and before he got out
I paid he had to sign
papers stating that he would
not bother them or go around
them so even if I left I
went and stayed with
them, he called all over
town trying to find me
but he couldn't come over
to my sisters and ~~two~~
bother me, because of the
temporary restraining order,
he still calls and tries to
take me into meeting him
places or letting him see
the kids, but at this time
I can't do that because

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the scars he left on me haven't even begun to fade yet.

Sincerely
Sherry Wood

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To Whom it may Concern;

I was married for 10 years. My husband started slapping me. Then he started cussing me and calling me names. He threatened to Kill me and tear my arms off at the sockets. It happened about 6 months after we were married. It got worse by hitting me with his fists. At first when he hurt me he said he was sorry and that he would not do it again. When it got to hitting with his fist he never said sorry. Later on I got so scared that I could not live in peace. I could not trust him whenever he walked into the house because I never knew when he would be in a good mood or bad mood. All I my kids was living in fear. So I decided that I could not live this way for a good environment for the kids. I planned on moving out by getting ready to live in another place with my 2 kids. I was all packed and ready to go to a shelter for a whole month at Billings. Then I moved to Missoula because in Billings he was calling the shelter every day trying to contact me & have me call him. He even threatened my friends that he would hurt them if they would not tell him where I was at. My friends did not know even where I was at. I did not get to a lawyer. I just

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waited till I got to Missoula to start the divorce. I was at the Shelter here at Missoula for 1 week then I found a place to live at. Then I started a divorce. With the divorce I got a T. R. O. He came to Missoula to find my own boy at school. He could not find our son so he went back to Billings. Then he got the Divorce papers and the T.R.O. at the same time. But he is still violating that by calling my lawyer and the shelter trying to find me. How he does know that I do live at Missoula instead of Billings and he is calling my lawyer. He does not have a lawyer for himself at all.

I feel so scared so many times because if he ever finds me he will beat me up. I would like to have him arrested if he keeps on bothering me.

Sincerely yours
Sonya L Dunn

Feb. 3, 1985

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To whom It May Concern:

My husband and I have been together for three years. We lived together for a year before getting married. The abuse started a few weeks after we were first together. The abuse at first started with a slap. Later during a time we were drinking, he hit me in the eye with his fist and it required hospitalization. The police would not believe me as my husband convenced them I had fallen.

Later the verbal abuse started along with the physical abuse. The threats toward me and the name calling became a constant thing. Then one night he was drunk and I was not drinking and he started kicking me in the face. The police arrested him that time but not for assult and I had to go to the hospital for treatment.

Eventually he started making threats towards my children, my family, my friends or any ~~one~~ who came around.

At one time he grabbed me around the neck, lifted me off my feet and threw me

II

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on the floor of his lawyers office while his lawyer was present. He was jailed for a while then set free. My children and I lived in constant fear and at times he was drinking my children would have to leave our home.

Every time I would try to do something for myself he would put so much pressure on me that I would eventually drop out of what I was doing.

I was in constant fear and confusing. At first he always managed to make me feel guilty about the beatings that I would help him be released from jail. Eventually with the help of counseling I finally would not drop an assault charge when he had back handed me and knocked out my tooth. After a few weeks he went into an alcoholism treatment center, came back, faced the judge and was put on a year probation.

I was going to school at the time and the verbal abuse started at school, then physical abuse at home and threats. I finally called my lawyer to file for a divorce.

At one time I had talked to my lawyer about a restraining order and he explained that he could get me one but it

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III

would take 30 days or more to get one and (restraining order)
even if I got one it would not prevent him from beating me. I needed one at the times he threatened me and I could not wait that long because I knew by that time he would have already beat me.

I filed for a divorce, asked my husband to leave and the same day he left, he called me and asked to come back. I told him no. I was home alone asleep on the couch, Halloween night of 1982 and he came back drunk. I ran from my mobile home across the street to another mobile home but the women would not let me in. The last thing I remember was ~~pleading~~ pleading with her to call the police that my husband was going to beat me up. By then he caught me, hit me with his fist and knocked me unconscious. The people at the hospital told me when I came to an hour or so later that he had kicked me in the face and head, knocked my teeth out, broke my nose, blacked both my eyes & numerous other cuts and bruises. At the time I came too they told me that they thought they would have to take me into surgery.

My husband was jailed, and later

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pleded guilty and was sentenced to 20 yrs dangerous, with 12 years suspended.

About a month and a half after my last beating I got my divorce. At that time a restraining order was written in to my divorce, but while he was in prison the verbal abuse and the threats did not stop because he continued to call me, cuss me out and threaten me.

The proposed bill would be helpful in order to prevent the abuse to keep continuing if he violates the restraining order.

Erlene Young

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. 310 DATE 2/4/85

SPONSOR Rep. Steve Waldron

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Holly Franz	Missoula	X	
LESLIE OAKLAND	Gt. FALLS	X	
Caryl Wickes Borchers	Gt. Falls	X	
Judi D. Thyon	Great Falls	X	
Rosemary Mills.	Great Falls	✓	
Cathy A. Gohn	Great Falls	✓	
Bob Rowe	Msla	✓	
Mary Gallagher	Msla	✓	
Lenore F. Jalvalpin	Helena	✓	
Ron Miller	Rep (SB 341 Sponsor)	✓	
Gail Kline	WLF	✓	
MIKE MCGRATH	HELENA	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 5, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, February 5, 1985 at the hour of 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 352: Rep. Richard Nelson, sponsor of HB 352, testified. Rep. Nelson stated that this bill was introduced at the request of the 11th Judicial District Judge in Kalispell. The bill would allow an associated misdemeanor to be taken care of in district court along with a felony in order to alleviate some of the cost and time involved in a prosecution. He said Judge Keedy feels it is a matter of efficiency of handling related offenses together.

Larry Majerus, Administrator of the Motor Vehicle Division of the Department of Justice, also appeared and spoke in favor of the bill. The department specifically supports the changes in page 1, lines 23 to 25 and page 2, lines 4 through 6. The department does not have a position on subsection 1, 2 and 3.

There being no further proponents or opponents to the bill, Rep. Nelson closed. In response to a question from the committee, Rep. Nelson said that this bill should be considered as a separate item from HB 476. Rep. Mercer pointed out that HB 352 is sort of a flipside to HB 476.

In response to a question asked by Rep. Mercer, Mr. Majerus stated his understanding of the bill will not give the district court concurrent jurisdiction in misdemeanors where there is only a low misdemeanor. This would deal only with the cases where there is both a high misdemeanor and a low misdemeanor.

There being no further questions, hearing closed on HB 352.

CONSIDERATION OF HOUSE BILL NOS. 332, 333, 335: Upon approval of Chairman Hannah, Rep. Bradley testified in support of all three bills which she sponsored.

HOUSE BILL NO. 332: Rep. Bradley submitted some amendments. She wishes to delete section 1 in its entirety because she didn't mean to get into that area. The title needs to be amended accordingly in order to conform with

Rep. Brown moved that HB 340 DO PASS AS AMENDED. The motion was seconded by Rep. Gould and discussion followed.

Rep. Montayne stated his disapproval of the bill because he feels it is unfair. Rep. Keyser, on the other hand, feels the bill is reasonable as it has changed the time frame in regards to abandonment and it sets some definite time periods.

Rep. Rapp-Svrcek feels the bill will not have a great deal of impact. He feels the bill is reasonable for both the tenant and the landlord. The question was called on the motion to pass as amended, and it carried with Reps. Kruegar and Montayne dissenting.

ACTION ON HOUSE BILL NO. 352: Rep. Keyser moved that HB 352 DO PASS. The motion was seconded by Rep. Gould.

Brenda Desmond, committee researcher, pointed out the difference of HB 352 and HB 476. She stated that there is no conflict between the bills. The question was called and the motion for a DO PASS carried unanimously.

ACTION ON HOUSE BILL NO. 447: Rep. Brown moved that HB 447 DO PASS. The motion was seconded by Rep. Kruegar, and discussion followed.

Rep. Miles spoke in favor of the bill stating that it one more attempt to make child support monies due and owing available to the child.

Rep. Mercer also stated his support for the bill although he did state his concern for the language on line 17. He moved to amend line 17 by deleting the language "debts created by the". The motion was seconded by Rep. Rapp-Svrcek and carried unanimously. Rep. Addy moved that HB 447 DO PASS AS AMENDED. The motion was seconded by Rep. O'Hara and passed with Rep. Cobb voting no.

ACTION ON HOUSE BILL NO. 310: Rep. O'Hara moved that HB 310 DO PASS. The motion was seconded by Rep. Hammond, and discussion followed.

Rep. Kruegar submitted several amendments for the committee's approval. His first amendment was to insert "or threatening" following "alleging" on page 5, line 2. He feels the amendment would make it clearer in terms of the threatening nature of physical abuse. The court are somewhat reluctant to enter a temporary restraining order in relation to threats of serious bodily harm. The second provision deals with the addition of persons related by blood or marriage. Rep. Kruegar says he has a problem will the present all-encompassing language. He feels those people related by blood or marriage

have the right of recourse on assault. He feels this section should be confined basically to domestic relations involving married people or those cohabiting with one another. He has a problem with in-laws being able to file petitions on behalf of other people.

Rep. Rapp-Svrcek requested that the question be divided.

The first amendment offered would deal with all of the language on lines 2 through 6 of page 5. The question was called, and the motion carried with Rep. Bergene dissenting.

Rep. Kruegar further moved that the committee adopt his second amendment which would strike "adult" and "marriage," following "spouses" on page 5, line 13 of the bill.

Rep. Rapp-Svrcek spoke against the adoption of this amendment. He said that other members of a household should be allowed to file a TRO on behalf of another person.

Rep. Bergene also spoke against the amendment. She feels the bill should be left as is.

Rep. Mercer pointed out that the only person who can file the petition is the actual person being abused.

Rep. Hannah agrees with Rep. Kruegar. He doesn't see why the blood marriage relationship is needed. He doesn't feel that by deleting this portion would affect anything.

Rep. Bergene feels the language should remain because to her the language on line 11 means those persons who would also be protected under the temporary restraining order, not the people who would be filing on behalf of another person.

The question was called, and a roll call vote was taken. The motion carried 11-7.

Rep. Kruegar further moved to strike on page 4, line 18 following "and" subsection (e) in its entirety. The word "and" would be inserted. The motion was seconded by Rep. Hannah and carried unanimously.

Rep. Kruegar further moved to amend the bill on page 7, following line 5 by striking Section 6 in its entirety. The motion was seconded by Rep. Mercer, and discussion followed. Rep. Kruegar said although the bill is a good one on its face, he doesn't feel jurisdiction should be

expanded to the justice courts. Even though he understands the problems that the rural areas may be faced with, he still feels that justice courts should not be allowed to issue TRO's.

In response to a question from Rep. Hammond, Rep. Kruegar feels that most TRO's can be obtained the same day they are applied for.

Rep. Addy also feels that J.P.'s should not have this additional responsibility.

Rep. Rapp-Svrcek stated his vehement opposition to the amendment. He feels that it definitely discriminates against the rural areas in Montana. He said this bill is directed towards emergency situations, and he further feels that jurisdiction could be extended to the justice of the peace courts in this one area. He feels that a large number of people are precluded under the present system from obtaining a TRO.

Rep. Darko also stated her opposition to the amendment. She said there is no guarantee that a district judge will be available to issue a TRO on particular days.

Rep. Cobb feels the amendment is needed. Without the amendment, he feels the system could be abused. He also pointed out that district court judges do not issue TRO's without notice. Again, Rep. Kruegar stated that to expand jurisdiction would really be consequential.

Rep. Mercer spoke in favor of the amendment with reluctance. He said there are two sides to every story, and he feels that most J.P.s would be quick to sign a one-sided complaint. He further believes that a J.P. cannot provide the adequate protection which could lead to further problems.

Rep. Miles feels the amendment waters the bill down. The whole concept of the bill is to provide emergency relief to victims.

The question was called and a roll call vote was taken on Rep. Kruegar's motion to delete section 6. The motion passed 10-8.

Rep. Eudaily stated his concern for the language on page 5, lines 13-16. He feels that persons cohabiting should be deleted from this section. He further moved to delete this language, and it was seconded by Rep. Keyser.

Both Reps. Bergene and Rapp-Svrcek spoke against this amendment. Rep. Rapp-Svrcek feels that these people should have the same rights as other people.

The question was called, and the motion failed with Reps. Hannah, Eudaily, Gould and Keyser voting in favor of the motion.

Rep. Hammond moved that HB 310 DO PASS AS AMENDED. The motion was seconded by Rep. Mercer.

Rep. Mercer proposed an amendment on page 6, line 14 following "~~dismissed~~." insert "terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and (d)". The motion was seconded by Rep. Gould and carried unanimously. Also included in the motion would be to strike "and" on line 11, page 6. The question was called, and the motion carried unanimously.

The question was called on the DO PASS AS AMENDED motion, and it carried with Reps. Addy and Hannah dissenting.

ACTION ON HOUSE BILL NO. 341: Rep. Brown moved that HB 341 DO PASS. The motion was seconded by Rep. Rapp-Svrcek.

Rep. Addy made a substitute motion for a DO NOT PASS. The motion was seconded by Rep. Montayne and discussed. Rep. Addy explained his reasons for not liking the bill. He said there may be a genuine dispute as to the value of a person's services or the validity of a particular contract. To provide for treble damages because someone happens to be wrong about whether or not they should be required to pay for the services when a good faith dispute is going on makes Rep. Addy a little bit nervous.

Rep. Keyser stated that he simply would not pay for the services if the job were done poorly. He feels that this bill would basically be used for criminal acts.

Rep. Mercer spoke on behalf of the bill saying that when a check is written, the recipient is entitled to the money just as if it were actual cash.

Rep. Addy withdrew his motion for a DO NOT PASS. He further moved to amend page 1, line 23 by striking: "where there is no good faith dispute as to the value of the goods delivered or services rendered". The motion was seconded by Rep. Hammond, and the question called. The motion passed with Reps. Montayne and Miles dissenting.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/5/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

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February 5 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 310

FIRST reading copy (WHITE color)

ABUSED HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY RESTRAINING ORDER

Respectfully report as follows: That HOUSE Bill No. 310

be amended as follows:

1. Page 4, line 18.
Following: "and"
Strike: subsection (c) in its entirety.
Insert: "and"

Delete subsequent subsection.

2. Page 5, line 2.
Following: "alleging"
Insert: "or threatening"

Following: "abuse"
Insert: ", harm, or bodily injury"

Following: "petitioner"
Strike: ", including" through "force," on line 5.

DO PASS

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

3. Page 5, line 13.
Following: "spouses,"
Strike: "adult" through "marriage,"

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4. Page 6, line 11.
Strike: "and"

5. Page 6, line 14.
Following: "dismissed;"
Insert: "terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and (d)"

6. Page 7, following line 5.
Strike: Section 6 in its entirety

Renumber subsequent sections.

7. Page 8, line 2.
Following: "court"
Strike: ", justice" through "judge" on line 3.

AND AS AMENDED,
DO PASS

STATE PUB. CO.
Helena, Mont.

REP. TOM HANNAH Chairman.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/5/85 BILL NO. 310 TIME 10:05

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles		✓
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Kruegar moved that the bill be amended as follows: Page 5, line 13 following "spouses," strike "adult" through "marriage,". The motion was seconded and carried 11-7.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/5/85 BILL NO. HB 310 TIME 10:20

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles		✓
John Montayne		✓
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Kruegar moved to delete section 6 in its entirety. The motion was seconded by Rep. Mercer and carried 10-8.

CS-31

CHAIRMAN--MAZUREK, JOE
SECRETARY-STALEY, CINDY
NORMAL SCHEDULE==> SITE: OLD SUPREME COURT ROOM DAYS: M-TU-W-TH-F TIME: 10:00 A.M.-12 NOON

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0310	2/11	3/11	3/19 3/20	CONCUR AS AMENDED		3/21
WALDRON, STEVE			ABUSED HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY RESTRAINING ORDER			
HB0323	2/11	3/12		CONCUR AS AMENDED		3/12
MOORE, JACK K.			CIVIL PENALTY FOR SHOPLIFTING			
HB0329	3/04	3/07		CONCUR AS AMENDED	JUDICIARY	3/7
HANNAH, TOM			REVISION OF MECHANICS' LIEN LAW RELATING TO SUPPLIERS AND SUBCONTRACTORS			
HB0329	3/07	3/26	3/26	TABLED		3/28
HANNAH, TOM			REVISION OF MECHANICS' LIEN LAW RELATING TO SUPPLIERS AND SUBCONTRACTORS			
HB0335	2/12	3/05		CONCUR AS AMENDED		3/5
BRADLEY, DOROTHY			ALLOW A COURT TO ORDER FORFEITED BAIL TO BE PAID AS RESTITUTION TO A VICTIM			
HB0340	2/12	3/13	3/20	CONCUR AS AMENDED		3/21
RAMIREZ, JACK			AMENDS LAWS ON DISPOSITION OF PROPERTY ABANDONED BY A TENANT AFTER VACATING			
HB0341	2/21	3/12		CONCUR AS AMENDED		3/21
MILLER, RON			CIVIL LIABILITY OF PERSON WHO STOPS PAYMENT ON CHECK, DRAFT, OR ORDER			
HB0352	2/11	3/12	3/12	CONCUR		3/12
NELSON, RICHARD M.			GIVING DIST. CRTS. JURISDICTION WITH JUSTICES' CRTS IN CERTAIN MISDEMEANORS			
HB0353	2/13	3/15	3/28	TABLED		3/15
NELSON, RICHARD M.			AGGRAVATED BURGLARY IF ENTER OCCUPIED STRUCTURE TO COMMIT AN OFFENSE			
HB0354	2/22	3/22		CONCUR AS AMENDED		3/23
BRANDEWIE, RAY			ABOLISHING STATE LICENSING OF AIRPORTS AND AIR NAVIGATION FACILITIES			
HB0363	3/04	3/18	3/22	CONCUR AS AMENDED		3/23
MARKS, ROBERT L. (BOB)			LIMITING PUNITIVE DAMAGES IN CIVIL ACTIONS			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 11, 1985

The forty-sixth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on March 11, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 644: Representative Dennis Nathe, sponsor of the bill, testified this bill provides for an evaluation after a conviction of any of the offenses found in Sections 45-5-502 through 505 and 45-5-507 and 625, MCA. It would provide for an evaluation of a person under conviction under those statutes before the sentencing. It gives the judges some background in their sentencing as to whether certain individuals should be removed from society or have counseling.

PROPONENTS: David Briggs testified on behalf of Mental Health Services Inc. He stated the standard training does not adequately train them to deal with the unique and difficult problems of sex offenders. In order to evaluate and treat them, they need special training and equipment. It is only through a proper evaluation that it can be determined who can or should be treated on an incarceration basis or safely on an outpatient basis in the community. Just putting them in jail does the offender and the community no good. Individuals incarcerated without treatment don't get any better. Sex offenders cannot be cured, but they can be controlled.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock questioned how this would work in connection with the bill that gives them 30 days in jail. Representative Nathe replied the other bill called for a mandatory jail sentence for violation of any of the statutes listed. They would spend their 30 days and then if this bill were passed, either during the 30 days in jail or after that, they would have to have the evaluation and then possibly go for treatment. Senator Yellowtail asked if "qualified by professional experience" were enough of a definition. Mr. Briggs replied they struggled with that but thought it was satisfactory. Senator Yellowtail asked if the court would know who those individuals were. Mr. Briggs replied that although there is no guarantee, he would hope so. Senator Mazurek pointed out we have some licensing standards by the Department of Institutions. He asked if they would be appropriate

CLOSING STATEMENT: Representative Gould stated he has checked this out with the U.S. Department of Transportation, and they have no problem with it.

Hearing on HB 726 was closed.

CONSIDERATION OF HB 44: Representative Steve Waldron, sponsor of HB 44, testified this bill requires that the victimizer in a rape or incest case will pay for the counseling costs of the victim. It ties itself to some current sections of law. We have incontrovertible evidence that those victims of these types of crimes require intensive counseling to overcome these types of assault.

PROPONENTS: Cathy Campbell, representing the Montana Association of Churches, presented written testimony in support of HB 44 (Exhibit 4). Gail Kline, representing the Women's Lobbyist Fund, presented written testimony in support of the bill (Exhibit 5).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked if he tried to leave the court an out after determining the ability to pay the court shall require payment. Representative Waldron replied it was not his objective. If he has the ability to pay, then the court should require the payment.

CLOSING STATEMENT: None.

Hearing on HB 44 was closed.

CONSIDERATION OF HB 310: Representative Steve Waldron, sponsor of the bill, stated this bill expands the use of the temporary restraining order (TRO) for spousal abuse situations. There must be a contempt of court filed against the individual. Consequently there isn't much protection with a TRO. It makes a violation of a TRO a criminal matter. It allows the officer to arrest someone for violating the TRO. They can get the offender or potential offender out of the way. It makes the knowledge of the TRO readily available to the police. It was taken from the self-help TRO laws in Oregon. The House, by a very close vote, decided not to have justices of the peace implement the TRO. That is not a problem in the urban areas, but it is a problem in the rural areas.

PROPONENTS: Representative Paul Rapp-Svrcek thought this was a very important mechanism for victims of domestic violence. He spoke in favor of reintroducing the language dealing with the justices of the peace.

If you leave the language out, you delete the advantages of this bill to the majority of the state. Bob Rowe, from the Montana Legal Services Association in Missoula, testified the victim's tool is the TRO. Access to the courts is necessary, as well as her ability to obtain an attorney and his ability to drop everying and deal with the problem immediately. The proposed bill addresses this problem by creating a self-help process. The second problem is that of enforcement. Studies and experience both indicate the need in a domestic violence program is to remove the offender. The police are reluctant to act. Offenders realize the limits of the TRO and act in disregard to it. It gives the offender notice. It provides a penalty. It gives the police the right to act. He has a problem in that the House deleted the provision allowing for waiver of the filing fee. In addition, where the victim flees from a location because of the abuse, he should not have to return to that place. The statute should make sure the victim may obtain a TRO where she resides because that is where she needs protection. The deletion of justice court jurisdiction is a very important issue, as Representative Rapp-Svrcek suggested. Mike McGrath, Lewis and Clark County Attorney, supported the provisions of HB 310, particularly those that make a violation a criminal offense. This will let law enforcement know what they can or cannot do. They will also have access to this information. Holly France, representing the Women's Law Caucus, presented written tesitmony in support of the bill (Exhibit 6). Caryl Wickes Borchers, representing the Montana Coalition Against Domestic Violence, presented written testimony in support of the bill (Exhibit 7). Julie Ferguson presented written testimony (Exhibit 8). In addition, she presented testimony from other individuals in support of the bill (Exhibit 9). Rosemary Keller presented written testimony in support of the bill (10). Kelly Chandler testified for the Women's Lobbyist Fund and presented written testimony (Exhibit 11).

ADDITIONAL TESTIMONY: Jim Jensen, representing the Montana Magistrates Association, stated he was present to answer any questions the committee might have, although he was neutral on the subject matter before the committee. Doug Grob, of Kalispell, stated he did not oppose any of these bills. He stated if these individuals are guilty, okay; but if they are not, he questioned whether these individuals will need proof to obtain the TROs.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked if there were a potential for this to have an impact on custody determinations. Mr. Rowe stated those matters would be removed to district court.

CLOSING STATEMENT: None.

Hearing on HB 310 was closed.

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 3/13

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

EE

COMMITTEE ON Judiciary

BILL NO H.B. 310 Sex Help Restraining Orders

VISITOR'S REGISTER HB 44, 300, 310 644, 717, 726, 7

NAME	REPRESENTING	Check One Support	Oppose
Caryl Wickes Borchers	Montana Coalition Against Domestic Violence	HB 310 ✓	
Linda Reed Wagner	Victim of Domestic Violence	HB 310 ✓	
Lynn Peterson	Dept of Transportation	HB 310 ✓	
Rosemary Keller	Victim Domestic Violence	HB 310 ✓	
Kathleen Chandler	Women's Lobbyist Fund	HB 310 HB 547 HB 44	
Linda Reed	Women's Lobbyist Fund	HB-44 HB-310 HB-547	
Tom Dozier	Mad D		HB 7
Kimberly Smith	Montana Legal Services Assn.	✓	
Bill Fiscus	Department of Justice		HB 72
Robert C. Rowe	Mont Legal Services Assn.	310 ✓	
Liam Shaw	Dept. of Labor		
Patty Campbell	MT Assn of Churches	HB 44	
Mark Bruno	United Health Services	HB 644	
Larry Majerus	Dept of Justice		HB 72
Mark Murphy	A.G. OFFICE	HB 781	
~~Tammie Mc~~ Buchanan	~~Missoula~~ Flathead Co. DUI Task Force	~~HB 310~~	HB 7.2
BETTY WILLS	MISSOULA COUNTY ATTY'S OFF		HB 72
Jim Jensen	MT. MAGISTRATES ASSN	ES HB 310	
Alan Nicholson	MT Judges - Helena		L 71
Marie Adrian	Counselor SB44	HB 547 HB 310	
Douglas Gist	Aleders Rep. (for Parent Edu Prog.)		HB 71
Bill Nd	" Hna.		(HB 71
Bill Leuwen	"		HB 71
Mike McGrath	County Atty's Assoc	HB 547; 310	
Chris Compton	Highway Traffic Safety - Justice		726
Caryl Wickes Borchers	Great Falls Community Core DUI Task Force, Team of Gt. Falls		HB 72

(Please leave prepared statement with Secretary)

56

DATE _____

COMMITTEE ON _____ BILL NO. _____

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Oppose
Caryl Nicoles Borders	MT. Coalition Against Domestic Violence	HB 44	781
Caryl Nicoles Borders	" " " "	HB 717	
Rosemary Kelly.			781
Julie Ferguson	Victim of Domestic Violence	717, 44	781
Holly Franz	Women's Law Caucus & U of M Law Sch.	HB 310	
Mary Gallagher	Women's Law Caucus	HB 315	
Anita Anderson	Women's Resource Center	HB 314	

(Please leave prepared statement with Secretary)

5

SBA MONTANA STUDENT BAR ASSOCIATION
UNIVERSITY OF MONTANA LAW SCHOOL
MISSOULA, MONTANA 59801
WOMEN'S LAW CAUCUS

TEMPORARY RESTRAINING ORDERS AND JUSTICES' OF THE PEACE

House Bill 310 provides protection for domestic violence victims by increasing availability and enforcement of temporary restraining orders. As originally introduced, HB 310 allowed justice of the peace courts to issue temporary restraining orders. The House of Representatives amended this section out of the bill. This amendment severely limits access to temporary restraining orders. The provision allowing justice of the peace courts to issue temporary restraining orders should be restored to HB 310.

The Amendment Limits Access to T.R.O.s

Currently only district court judges may issue restraining orders. Restraining orders provide emergency relief from imminent harm. To be effective, they must be available immediately. Many women are now denied this immediate relief. Rural women are at a special disadvantage. A single judicial district may cover hundreds of miles. For example, one district judge covers the counties of Meagher, Wheatland, Golden Valley and Mussellshell. Domestic violence victims in these counties are effectively denied emergency relief due to the lack of access to district judges. Urban women suffer also. Domestic violence victims in Butte went an entire month this summer without access to a district judge. One district judge was on vacation, and the other was ill. Butte victims had nowhere to turn. Since every county has at least one justice of the peace, allowing justices to issue restraining orders would protect victims by greatly increasing access to emergency relief.

Justices of the Peace Have the Necessary Expertise

A temporary restraining order may be issued when a delay would cause immediate and irreparable injury to the victim. MCA 27-19-315. Justices of the peace have the expertise to make this determination. Their current jurisdiction requires them to make many similar determinations. For example, justice of the peace courts have the power to issue arrest warrants. MCA 46-1-201(6). Before issuing an arrest warrant, the justice of peace must determine whether there is sufficient evidence to believe that the person committed a crime. MCA 46-6-201. This determination is very similar to that involved in issuing a temporary restraining order. Justice of the peace courts also determine whether an arrested person has committed a felony, and if not, the justice has the power to discharge the accused person. MCA 46-10-203. In addition, justices of the peace have jurisdiction over all misdemeanor domestic assault cases. MCA 3-10-303. It is sadly ironic that a justice of the peace can punish an offender after a violent act but cannot prevent violence.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 031185
BILL NO. HB 210

February 4, 1985

Dear Legislators,

I am here today to support House Bill 310- Self-Help Temporary Restraining Orders, as a representative from the Montana Coalition Against Domestic Violence.

We feel a "Self Help" Restraining Order would allow a more effective tool to keep the family violence from escalating and to work with our clients, especially in the rural areas where people don't have access to a long term shelter or safe homes.

Currently, I have a client who got a Temporary Restraining Order and he broke it and came into her home with a shotgun. She has to go to court next Tuesday, regarding this violation of the "TRO", instead of being able to have an immediate arrest, since it's a Civil Writ instead of a criminal offense. She came into the shelter after this incident, where she would be safe.

Nationally, there are more homicides in family violence than any other way. In Cascade County we have never had any homicides due to Spouse Abuse, in the course of seven years. However, we were fortunate enough to have a shelter to take them out of the crisis situation. We need to give some other options to other parts of the state such as a "Self Help Restraining Order."

I am very proud of the ways in which our "grass roots" plans have developed into strong programs of human services and education, through the cooperation of the past four legislatures, the past two governors, and the Department of Social and Rehabilitation Services in the State of Montana. Without this cooperation, we would not have been able to serve the victims of Domestic Violence as we have. We hope for your continued support and assistance in the future, to further expand the programs which we have begun, and to create those needed to assist the victims of this crime.

Sincerely,

Caryl Wickes Borchers

Caryl Wickes Borchers

Executive Director, Great Falls Mercy Home
Chair, Montana State Task Force on Spouse Abuse
(1978-1982)
Rep., Montana Coalition Against Domestic Violence

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 031185
BILL NO. HB 310

February 1985

Capitol Station
Helena, Mt. 59601

Dear Legislators,

House Bill 310 is an essential piece of legislation in combating domestic violence. Temporary restraining orders, as they stand now, are very costly and essentially ineffective. A lot of people in dangerous situations cannot afford to have "TRO's" issued, have them issued only to find the police's hands tied when called in to assist, or the time involved in issuing TRO's leaves the person vulnerable and very afraid.

In an abuse situation, effective help is needed immediately. Usually, by the time the police are called in, an abuse situation has escalated into a crisis situation. Even if a restraining order has been issued, essentially all the police can do is ask him to leave. If a restraining order is broken, it has to be taken back to court on a contempt charge, which is so time consuming and again, costly, that this action is seldom followed up. It doesn't provide the immediate assistance needed today in abuse situations, yet is the only available tool people have now for help that is so desperately needed.

One area of House Bill 310 being amended has been done so without proper consideration of why it was put there in the first place. This involves transferring issuance of restraining orders to the Justice of the Peace Court System. The reason behind this was to provide immediate aid to abuse victims in outlying areas, where women have no access to shelters, and going through the District Court System to obtain a restraining order could require extensive travel and time.

Again, it is imperative an abuse victim receives aid immediately, not two to three weeks and $150 (minimum cost) later.

Domestic abuse in our society has been tolerated too long. It must be stopped. Witnessing abuse as a child teaches that child that the abuse is a normal reaction to distress. Abuse has been carried through generation after generation because of this learned behavior. Domestic violence can be directly related to crimes such as child abuse, incest, sexual abuse and many others, so any effective legislation against domestic violence will also have a positive effect on other crimes as well.

I feel a child witnessing abuse is ingrained with a tolerance to things he knows in his heart are wrong. This tolerance is rampant in society today. Let's begin now, in passing House Bill 310, as written, to effectively combat domestic violence. I assure you, the results will be dramatic.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 031185
BILL NO. HB 310

Very Sincerely,

Julie N. Dugg

February 7, 1985

Dear Legislators,

"Do-it-yourself" restraining orders are needed because of the cost involved in issuing them now. A lot of people in dangerous situations cannot afford to issue a restraining order so are left vulnerable. Is a person in danger required to remain there solely on the issue of finances? That's what happens today. That is why "Do-it-yourself" restraining orders are needed.

I, myself, never obtained a restraining order due to the cost. I left a home my spouse and I were purchasing together, my possessions and those of my children to enter a shelter. I took only a few clothes and some items that were special to me. While I stayed at the shelter, there were several times My spouse threatened to sell or dispose of what I had left there. Had I had a restraining order, my children and I might have been able to remain in our home.

Another crucial reason for the "Do-it-yourself" restraining order is so many victims do not have immediate access to a shelter as I did. If they have no safe place to go, and no finances available to issue a restraining order, they have little choice but to remain in the situation, no matter how dangerous it is to her and her family.

Sincerely,

Julie K Ferguson

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 031185
BILL NO. HB 310

February 1985

Capitol Station
Helena, Mt. 59601

Dear Legislator,

I am writing in reference to the need for more support of battered spouse centers, and equally important, for the need of more adequate protection for women in battered situations.

In the 2½ weeks after my last battering, I lived in a state of chronic fear before I was finally able to tie up all of my loose ends and leave town. I feel that the laws at this time are inept in dealing with the rampantly growing problem of family violence.

There is no doubt in my mind that my husband would have succeeded in ending my life if my children had not awaken and heard my pleas for help. If I had pressed charges, my husband would have spent a short time in jail and then would have probably finished what he had not ended.

I had no financial means of obtaining a lawyer in order to obtain a restraining order for my husband. My children and I were forced to leave our home, town, schools and employment to be safe. There is no way I can express to you the emotional stress this has subjected our family to.

In closing, I would like to make a statement about what the battered shelters (we have stayed in Billings and Great Falls) have done for me. They have given me hope, that there is and will be a better way of life for my children and myself. They have helped me find the resources available, new directions to take, and most importantly, once again I feel like a whole person, instead of the shattered and fragmented woman I was before I finally sought help.

Sincerely,

Melissa

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 031185
BILL NO. HB 310

February 1985

Capital Station
Helena, Montana 59601

Dear Legislator,

I am 7 years old. I ~~wish~~ and I want to help people so mother's won't get hurt by ~~t~~ there husband's. My sister has got problems because my mother's get's beat up by my dad. Please help so we can live in a better life.

Dusty

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 031185
BILL NO. HB 310

February 1985

Capitol Station
Helena, Montana 59601

Dear Legislator,

I am ten years old and I'm writing about supporting the home and all the people that have had family problems.

I hate seeing my mom get beat up, and if you don't help support us it well get very bad. My little brother and sisters are really hurt by my mother and father fighting. Now we have somewhere to stay .Please help the home of battered women and childen.

Sincerely,
Shawn
Shawn

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 031185
BILL NO. HB 310

Dear Representative,

I feel that the self-made restraining order would benefit both men and women. It would especially be beneficial to middle-and low-income spouses. I was low-income myself.

I experienced fear, abuse, and assaults as I could not afford $200.00 for the lawyer to obtain me a restraining order. I had called the police several times, and was told that they had no authority without a restraining order against my spouse. Also my husband kicked my daughter (4 months old) and I out of our home, took my vehicle, and sold most of my possessions.

Therefore I suffered numerous beatings before I could afford to pay for a divorce.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 031185
BILL NO. HB 310

Sincerely,

A very concerned Taxpayer

February 4, 1985

Dear Legislators,

I am a houseparent/counselor/advocate at the Mercy Home, a shelter for battered women and their children, in Great Falls, Montana. I come to you today to urge your support for some important legislation which directly applies to those whom I serve.

House Bill 310 has been proposed to allow family and household members to obtain temporary restraining orders without cost or attorney services. Also, it would give criminal status to the violation of such an order, warranting arrest.

For the many victims of domestic abuse who manage to establish themselves free from their batterers, the nightmare does not end. Often, the batterer discovers where the woman is living and continues to harass her verbally, physically, even sexually. Why should anyone have to pay for peace and safety? Too many times we've had to tell women who come to us, penniless, that they cannot afford a temporary restraining order. For those able to afford them, the difficulty in enforcing them reduces their effectiveness.

In domestic abuse, as in all crimes, time is a key factor. By giving immediate criminal status to the violation of a restraining order, its effectiveness increases, and perhaps those served with such an order will take it more seriously.

In working with battered women, I have had to leave many questions unanswered. One such question is "Why do I have to leave my home? I haven't done anything! He should be the one to leave." Since these women need to get out of an abusive situation, as of now her only choice is to leave. She comes to us with only the clothes on her back, her children the same. Later attempts to enter her home for personal belongings is potentially dangerous and often requires police protection. By allowing the batterer to remain in the home, we are condoning his behavior. Domestic abuse is a crime and should be seen as such, rather than be minimized to a "marital problem." No one has the right to shatter another's peace.

I have worked with battered women since August 1984. I have been woken at 3:30 a.m. to answer crisis calls. I have dealt with hysterical women over the phone who cry," But the police won't help me!" I have watched little children act out the violent behavior they have seen--"And then he did this and this..." followed by kicking, punching, pulling and pushing motions. I have seen enough, and yet I shall see more.

In conclusion, I urge your support for House Bill 310, as well as your support for continued funding for programs for the victims of domestic violence, such as the Mercy Home. While shelters such as ours can educate and provide safety for the victim, when shall we begin to address the criminal?

Recently, I had a young woman and her son in our office. She fled from her hometown, leaving family, friends and personal possessions behind, to escape a very dangerously abusive ex-boyfriend. Her decision to flee was not one of choice; for safety, it was her only option. Now alone in a new city, not knowing anyone, missing her family and friends, I sat with her as she cried over her situation. "It's so unfair. I can't even live where I want to live. All because of one person."

Your support, please.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 031185
BILL NO. HB 310

Sincerely,

Cathy St. John

66

Dear Montana Legislature,

I am writing in reference to shelters. I am currently staying at the Mercy Home. I am extremely grateful that there was a place and people to turn to . It is a terrifying feeling when a person has no place to go. Especially after being abused. Life is difficult at times and it is extremely more difficult when your spouse or someone you love is threatening your life or the life of your child. A person needs their own time and solitude to be able to think over their situation and perhaps take action. This is what I feel the Mercy Home provides.

I am also concerned with the first bill, which states that the batterer is to be arrested automatically if it appears there has been abuse toward their spouse or mate. This takes alot of pressure away from the victim. Plus, it may give officers a less frustrated feeling toward these sort of situations. It might even make a batterer think twice before doing something he may later regret.

As for the temporary restraining order; I feel it is extremely important for punishment to be a bit harsher. This is so the batterer will take the TRO seriously. A victim is usually pushed to the limit before obtaining these. Once the victim should receive one, they should at least be able to feel that the police will help as much as possible, Also being able to obtain an order without an attorney and at no cost would be ideal. The majority of women usually are in a financial bind or not even married to the batterer. This makes it almost impossible to obtain a TRO.

Please consider the proposals presented with thought and care.

Thank you.

Karen

SENATE JUDICIARY COMMITTEE
EXH'BIT NO. 9
DATE 031185
BILL NO. HB 310

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 031185
BILL NO. HB 310

February 4, 1985

Dear Legislators,

I had a need for a restraining order on my spouse in August '84. Luckily, I had a job and was able to pay an attorney for one, but even so, it still took two weeks to obtain. Can you imagine how long 2 weeks is when you live in fear of someone? I had to continue working to keep food in my children's mouths. I could not hide. My bosses received threatening phone calls in the office, and at their homes, at 2 and 3 in the morning; their wives were subjected to this also. My female co-workers also feared my husband, as he would enter the office mid-morning and threaten them if I were not around. The security men were alerted to this, but my husband was seen lurking in the the bushes where I work and hiding behind cars close to where I had parked mine.

I was subjected to his shouting obscenities at me as I walked with colleagues across the parking lot and people I work for were accused of having affairs with me, and threatened by my husband. He bragged about carryine a gun in the car, threatening to shoot me and any man that might be walking out of work with me. Since I work in a place with over 1,200 employees, I was terrified to walk out alone and even more fearful that someone else might be hurt by this maniac.

We were married five years ago in England. He was charming, attentive, good looking, and always a gentleman around my family. He had been married before, but told me his wife had "run off to Holland" with their two children. I had neither the sense nor initiative at the time, to check this out. His excuse for getting drunk was because he missed his children so. I sought to resolve that by having his child, now a beautiful four-year-old girl.

We came to the States when she was 4 months old. I sold my home in England for £18,000($45,000). I had only a £5,000 ($12,500) loan on it. My car and all my furniture were paid for and I had no other debts to pay. I sold my car and all my appliances to follow the man I loved to Montana, where I knew no one and had no relatives. I brought Waterford crystal, china, antiques and other items of great worth with me. When I got to Malstrom Air Force Base I paid cash for all the carpets throughout our home and cash for all new appliances.

By summer '82, I realized that my husband had a serious drinking/drug problem. He'd go to work at 4am, come home at 1pm and start drinking. This would continue all day and night until he blacked out. He totally refused to discuss his lifestyles or problems, and refused to admit he had a problem. He disappeared for 2-3 days at a time, started fires in our home and couldn't remember them the next day. When I went to the base chaplains, his commander, and base psychiatrists, all they did was put him on an outpatient program in January '83. He managed to stay dry for some time, but in summer '83, was accepted for an overseas assignment which required special clearance. He left in November '83 and his family met him at JFK airport, so drunk he had to be helped off the plane. They phoned me to see how long he had been drinking and to what extent.

He returned in May '84 and within 2 weeks his behavior went from normal to bizarre, nervous and edgy. I realized he needed to drink again. He taped all our phone calls, spent long hours in the basement, missed meals. A month later, his moods deepened and darkened. He had no time for his darling, bubbly, blonde 3-year-old daughter. Suddenly, instead of just hearing voices on the phone tapes, he heard "extra voices," voices which he concluded were those of the men I was having affairs with.

I work full time and always arrived home within 5 minutes of punching out. I never went out evenings and when I shopped I always invited my husband along and took my daughter. I never answered the phone when he was home so he could not accuse me of lying when it was a wrong number. I called his family for help. They advised me to go to the Base Chaplain, which I did. With his help, and with that of the commander, I got him into psychiatric help, but only on an outpatient basis.

The final blow came when after all weekend of his verbal abuse, pinning me down in chairs, preventing me from leaving, accusing the children of lying, at 4am Monday morning he dragged me from my bed, in front of the children, and tried to strangle me.

I called the base Chaplain at home, waking him up, and he advised me to go to the Mercy Home in Great Falls.

Since then, I have asked myself a thousand times, what would have happened to the four of us (myself and three children), had there been no Mercy Home? Would friends have taken us in, knowing this man's behavior traits? Yes, I needed an immediate restraining order for my children, as well as for myself.

While gone, my husband had taken my bank cards and credit cards from my billfold. My credit union told me my name had been taken off the account and I could not even get my own wages that had been direct deposited a few days earlier. I had no money for food, and all I owned was in the house. I had to move into low income housing and receive a care package of food from the Mercy Home to survive.

Although I got a restraining order, child support and an order to return a few basic items of furniture, my problems were far from over. My husband continually broke the restraining order, called us at all hours of the night from bars, as well as gave my phone number to other drunks who called and threatened me at 3am. He'd show up at my apartment, and I'd call the police, who told me "But, we can't arrest him." "Why not?" "But, you're MARRIED!"

Here I am, living across town from him, forced from my home and all I've worked for for 20 years because of his brutality/drunkenness and yet, he is outside of the law because we have a marriage license. I never realized what I was signing away back in 1980 when I promised to love and cherish this man. We pay our taxes to be protected and safe in our homes, but there seems to be a loophole somewhere in the law's framework that allows a person such behavior.

Where I'm from in England, when a person has a restraining order, you call the police and they arrest the violator. You both go before the judge within 24 hours, and he makes a decision, usually 2 days in jail for first offenses, up to 30 days for further offenses. It's effective, very effective, and very few ever break it once and rarely come back for more after cooling off in a cell. But here I am, having paid $200 for one, it's 3am and I've my 3-year-old daughter clinging to me, while the officer tells me he can't make an arrest.

I had to get the restraining order to try to prevent my spouse from selling, hiding or disposing of my hard earned possessions. Now, six months from the day we were forced out of our beautiful home, my elder son still sleeps on a mattress on the floor, my daughter and I share both a bed and a room. My husband took all the savings in our three accounts, refuses to sell the house or turn over the items I requested in the court. He is behind in all the bills, is in bars every night, while I have had to change my phone numbers and my lifestyle, but yes, I have a restraining order!

We certainly need an "instant" restraining order that's easy to obtain for people on a small income, but much more importantly, we need it to be effective! My husband is laughing at your court system--he can blatantly defy what is ordered and get away with it.

With the influx of wives and children such as myself to Montana (courtesy of the Air Force), this state definitely needs "Do-it-Yourself Restraining Orders," and shelters where they can be safe and begin to restructure their lives. It is only through awareness, education and the law, that we will overcome behavior such as my husband's. This education needs to begin in schools where children, already marred by the scenes witnessed at h[redacted], can learn this is not normal behavior, and yes, we do live in a country t[redacted] is home for the free and the brave, not run by those we should be afraid to go home to each night. Please, Montana, pass this bill without question, to protect your most cherished asset, your children and families.

It is long overdue.

Sincerely,

Rosemary Keller.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 031185
BILL NO. HB 310

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

March 11, 1985

Testimony of the Women's Lobbyist Fund by Kelly Chandler, before the Senate Judiciary Committee on HB 310

Mr. Chairman and members of the Committee:

My name is Kelly Chandler, testifying for the Women's Lobbyist Fund. Please support HB 310 and the amendment to allow Justices of the Peace to issue temporary restraining orders (TRO). The decision whether or not to support HB 310 and the amendment (to allow a Justice of the Peace to issue a TRO) is a question of protection for abused victims. In domestic violence cases, women are usually the victims.

You have heard the saying: a man's home is his castle. Should not a woman's home be her castle in which she is safe?

By giving victims increased availability to TRO's through a Justice of the Peace and through enforcement of temporary restraining orders, we will not be sacrificing the abused victims' rights and will be consistent with our Montana Constitution, which states, "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."

Please do not deny the victims of domestic violence emergency protection for safe refuge in their "castle". I urge you on behalf of myself and as a representative of the Women's Lobbyist Fund to support HB 310 with the amendment.

Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 031185
BILL NO. HB 310

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 19, 1985

The fifty-second meeting of the Senate Judiciary Committee was called to order at 10:07 a.m. on March 19, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 613: Representative Tom Hannah, sponsor of HB 613, testified this bill was caused by a recent supreme court decision that took the balanced budget amendment off the November ballot. The timing of that event concerned him. He feels the legislature should address that so we can deal with the initiative process in a timely manner. This bill says any ruling needs to happen within a certain timeframe. or after the election. It created real havoc because ballots had to be reprinted and absentee ballots were late. The bill deals with just the certification of printing.

PROPONENTS: Larry Akey, Chief Deputy to the Secretary of State, testified this bill was requested by his office. This gives local election officers a green light to proceed with the election process at the time the ballot is certified. What we are trying to do is give the local election officers a green light to proceed with printing and distribution of voter distribution pamphlets. It does not prohibit anyone from challenging a ballot issue in the courts. It is certified between mid-July and mid-September. It does not prohibit the court from hearing a challenge after ballot certification. What they are asking is that there be some balance of the administration process with the citizens' right to challenge that process in court. Would HB 613 stand up to a constitutional test? What our system of government has is a system of checks and balances. The check the court has on the legislature is to declare laws unconstitutional. The check the legislature has is declaring jurisdictional limits. Mark Mackin, on behalf of the Citizens Legislative Coalition, testified this bill would require them to bring any challenges within a timely manner.

OPPONENTS: Robert Anderson, lobbyist from Montana Common Cause, presented written testimony in opposition to the bill (Exhibit 1). Don Judge, representing Montana State AFL-CIO, opposed the bill because it is improper to limit the court to applying improper remedies. He had a question about the way the bill was drafted. What if a ballot issue is an issue that is not clear to the voters? There has been a certification

through it. However, this law greatly affects the bread winner of a family. They feel the statute is fine the way it is.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Spaeth stated it was the intent of the legislature to have $300,000 per claim, not per claimant. He questioned some of our whole realm of sovereign immunity, but we should not overturn it without knowing some of its ramifications.

Hearing on HB 714 was closed.

ACTION ON HB 426: Senator Blaylock moved HB 426 be amended as follows:

Page 3, line 8.
Following: "27-19-316"
Strike: "(4)"

The motion carried unanimously. Senator Blaylock moved HB 426 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 200: Proposed amendments were distributed to the committee (Exhibit 4). Mr. Petesch explained what these amendments do is repeal the termination date which is section 1 in the bill and then the other changes are you go to the effective date section and say section 2 (the repealer) would be effective on passage and approval, and section 1 (the new number for overcrowding) would then be effective 30 days after the occupancy. Senator Towe commented that is a cleaner way of doing it. Senator Mazurek stated we are saying what the bill currently says in a cleaner way. Senator Towe explained we were amending a section and then repealing it. He approved. Senator Towe moved the amendments be adopted. The motion carried unanimously. Senator Blaylock moved HB 200 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 44: Senator Towe moved HB 44 be amended (as indicated by the standing committee report). The motion carried unanimously. Senator Blaylock moved HB 44 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senator Daniels voting in opposition.

FURTHER CONSIDERATION OF HB 310: Senator Crippen presented proposed amendments to the committee (Exhibit 5) and moved their adoption. This just provides another forum so the person involved can show he cannot pay the costs. It would not do any good to allow any relief if he cannot pay the costs. Mr. Petesch pointed out you need to make some amendments to page 7, lines 6-8, because there is still reference to justice and municipal courts. The motion to amend carried unanimously. Senator Shaw moved allowing the justice of the peace to file a restraining

order be reinserted on page 7, line 12, through page 8, line 6. Mr. Petesch pointed out you also need to reinsert the stricken language on page 8, lines 8-9. Senator Towe asked what his reasoning was. Just because there is no judge in Wibaux doesn't mean you can't get one. The telephone doesn't take any longer. Senator Shaw replied if you were asking for a restraining order, you wouldn't need to take the time to go after a district judge. You can get the justice of the peace out of bed at those times. Senator Towe suggested stating it must be a municipal judge or justice of the peace with a law degree. Senator Shaw replied no. Senator Crippen asked if that situation did happen, what's the right of the person who the restraining order is against? The district judge can come in and overturn the restraining order. Can't a district court overturn any restraining order? Senator Towe replied there is no limitation on it or you have to do it ex parte on a justice of the peace's issuing a temporary restraining order (TRO). Senator Mazurek stated TROs should only be granted in the rarest of circumstances because you are letting one party to a dispute go to court and get an order against another party who has never said a word. In fact, district judges should only do it in rarest of circumstances. We have only recently allowed them in marital disputes. Senator Yellowtail pointed out the concern was for matters of immediacy in issues of domestic violence. They feel a strong need for ready access to TROs. They need quick access. Senator Towe commented Senator Yellowtail is correct, and there are occasions when you need quick and immediate action, but there are a lot of others when people think they need quick action, and they do not at all.. If you violate that restraining order, it is a criminal offense, and you can be put in jail. It doesn't matter now whether it is correct; it is whether or not you violated it. He doesn't trust district judges or federal judges with TROs, but, there is more legal understanding. There just might be another side to the story. Senator Daniels stated he thinks Senator Yellowtail has made the remark that they need it immediately. Their judge is not available all of the time. That is the only good thing about this bill is that a justice of the peace can issue a TRO. A judge with common sense is just as capable of making a TRO as a judge with a degree. The immediate thing is the thing he is concerned about. Senator Pinsoneault stated he thinks the parameters need to be defined, and it is in the title of the bill. The justice of the peace knows the participants better than the judge. The bill has merit, and it will accomplish what it is intended to do. Senator Yellowtail stated there is potential for error and abuse, but if we were to error, let's error in the direction of providing protection. Senator Crippen agreed. He asked if we could draft another bill that a district judge may lift a TRO issued by a justice of the peace. Senator Towe commented if you are going to allow the justices of the peace and municipal court justices access to restraining orders, they should be governed by the limitations of a district judge and appealed to the district judge. Senator Mazurek stated you need the same protections to

apply in the justice court as in the district court. Senator Blaylock stated he agrees with Senator Towe that the caveat is a powerful tool. He felt Mr. Petesch should make them go through the same procedure. Mr. Petesch stated he felt the committee should look at subsections 3 and 4 on page 8 separately as they are not directly related to the justice courts. Senator Towe thought we better keep it to the county where the physical abuse was committed. Mr. Petesch pointed out both of those address the fleeing spouse issue. Senator Towe asked Mr. Petesch to carefully go through this bill to be sure this is very clearly limited to the physical abuse situation and that the justice of the peace does not have the opportunity to get into ordering the child support payments.

ACTION ON HB 681: Representative Hannah stated his son was involved in an accident over transmittal break. In the trauma of that, the press were monitoring the reports. His brother came running in after being to several hospitals because he heard his nephew had been struck by a car. He also heard that his son had serious internal injuries and was seriously hurt. He didn't think it was appropriate for his brother to find out via the radio erroneous information about his sone. It wouldn't make any difference to the people's right to know to delay that information by a couple hours. Because we are public officials, it got more press than it had to have. It was his view he didn't like the bill when it came through. If we are going to give this information out, it is up to you. That isn't information that the people have to have. Even though we are talking about the standards of critical, serious, etc., there are circumstances where the wrong information is going out. Senator Shaw stated it wouldn't make any difference what we have done outside you would have the opportunity to sue the newspaper reporter. You can't stop them. Representative Hannah responded that is true. Senator Crippen stated if this law where in effect, couldn't the reverse be true. The hospital could release information the newspaper would contact the hospital and get the information rather than relying on word of mouth? Representative Hannah stated he thinks it is an area of abuse and is not sure this will solve it. He thinks it is an area that needs more review. Senator Towe moved HB 681 be amended as follows:

Page 3, line 13.
Following: "FACILITY"
Insert: ", provided the existence of the hospitalization is publicly known, or involves a public figure and release of the information would not violate his right of privacy"

Senator Towe commented this language was reviewed by both the hospitals and Mike Meloy, and these are words they are used to dealing with. In addition to having to allow for the fact when the governor checks into the hospital, that is a newsworthy event and you cannot eliminate that

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 03/9

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

PROPOSED AMENDMENTS - HB 310

1. Page 7, line 4.
Following: "40-4-106"
Strike: "."
Insert: ", and uniform sample affidavit and orders of inability to pay filing fees or other costs."

2. Page 7, line 5.
Following: "restraining order"
Insert: "and the inability to pay filing fees order"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 031985
BILL NO. HB 310

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 20, 1985

The fifty-third meeting of the Senate Judiciary Committee was called to order on March 20, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 803: Representative Ray Peck, sponsor of HB 803, stated the title of the bill tells the story. He has a little concern he wanted to address to the committee concerning page 1, lines 16-18. The intent is it would be $25 per day. That is the fee for courts of record.

PROPONENTS: Pat Paul, Justice of the Peace in Cascade County, testified what this bill tries to do is make it equal to the district court. Whether it is a court of record or not, they are performing the same function for society. It is only fair they at least be paid equal to the district court. It should not be an undue burden to serve. Their jury trials last only one day. There are not that many trials in Montana. Jim Jensen, representing the Montana Magistrates Association, testified the fiscal impact on Missoula County for the first half of 1985, with the two courts combined, was $1,931.71 in witness fees. Doubling that, the maximum would be about $37,000 annually that it would cost the county. He thought most judges will continue to assess most of these fees back to those that can afford them.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Shaw asked if this would still be a tax increase to the taxpayers of the counties. Mr. Jensen replied yes. Judge Paul responded that at least in Cascade County, the answer to that question would be no, because when it comes budget time, they pad the budget for the number of jury trials they anticipate they will have for the year. They have that surplus in the budget because they seldom have those jury trials and that money is still there. They have always turned money back in because they have not met the anticipation of having those trials. Senator Daniels asked why they penalize the juror who gets excused. Judge Paul replied in most cases the juror is excused on his own motion, not because he could have called the day before and have been excused based on that. Very few jurors have shown

FURTHER CONSIDERATION OF HB 310: Proposed amendments were distributed to the committee (Exhibit 2). Senator Mazurek explained these amendments would reinsert the ability to get a temporary restraining order (TRO) from a justice of the peace. Mr. Petesch explained the first two are Senator Crippen's suggestions. The third reinserts justice and municipal courts and provides you could deny the petition because the person has fled the home. The fourth is language we came up with for review by the district court. Senator Towe asked if we needed to then add that it is subject to hearing or the judge may set it for hearing if he so chooses. Senator Pinsoneault suggested it not be complicated. This is simple. It can be done in chambers. Mr. Petesch pointed out you can remove it immediately to district court. If a dissolution or separation proceeding is filed while the order is in effect, or if a petition which has been filed is voluntarily dismissed, jurisdiction is removed. Senator Towe suggested that a section 8 be added stating any case brought by Section 40-4-103, MCA, may be removed to district court. He stated he would talk further with Mr. Petesch about this.

FURTHER CONSIDERATION OF HB 585: Senator Daniels stated you might as well abolish it. You are increasing the time the criminal will be in court. Chairman Mazurek stated since it appears the bill may need some technical changes, it will be further considered at a later date.

ACTION ON HB 803: Senator Pinsoneault asked if city courts were included in this bill. Mr. Petesch responded courts not of record. Senator Pinsoneault stated you are increasing the cost, and they don't have much money. Senator Mazurek stated he suspects in those courts, most of those are criminal cases. Senator Pinsoneault commented it is the people's court and he has a great amount of faith in the way it functions. Senator Daniels moved HB 803 be recommended BE NOT CONCURRED IN. It is a burden upon cities with limited budgets. In small towns, people consider it an honor to be able to serve on the jury. Senator Towe pointed out we had a bill we did pass that will increase the fees these same courts will get from filing and the fees they already receive more than offset the costs. The motion failed with Senators Daniels, Mazurek, and Pinsoneault voting in favor. Senator Towe moved HB 803 be recommended BE CONCURRED IN. The motion carried with Senator Pinsoneault voting in opposition.

ACTION ON HB 481: Senator Galt moved HB 481 be tabled. Senator Daniels moved as a substitute motion HB 481 be recommended BE NOT CONCURRED IN. The motion carried with Senators Brown and Mazurek voting in opposition.

FURTHER CONSIDERATION OF HB 700: Senator Pinsoneault stated he supported the bill because it puts the law like it was before the supreme court case. Senator Towe stated he had some problems with it. He had

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 032085

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

AMENDMENTS TO HB 310:

1. Page 7, line 4.
Following: "40-4-106"
Insert: ", and uniform sample affidavits and orders of inability to pay filing fees or other costs"

2. Page 7, line 5.
Following: "order"
Insert: "and the inability to pay filing fees order"

3. Page 7, line 12 through page 8, line 6.
Reinsert: stricken language
Renumber: subsequent sections

4. Page 8, line 7.
Following: line 6
Insert: "Section 7. Review by district court. An order issued by a municipal court or justice court pursuant to 40-4-106(3) is reviewable by the judge of the district court at chambers. The district judge may affirm, dissolve, or modify an order of a municipal court or justice court made pursuant to 40-4-106(3)."
Renumber: subsequent sections

5. Page 8. line 9.
Following: "judge"
Insert: "justice of the peace, or municipal court judge"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 032085
BILL NO. HB 310

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 21, 1985

The fifty-fourth meeting of the Senate Judiciary Committee was called to order at 10:07 a.m. on March 21, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 609: Representative Jack Ramirez, sponsor of HB 609, testified this bill does not require a whole lot of concern. The National Commission on Uniform Laws recommended this legislation regarding durable powers of attorneys. We have the law on the books already. It is a very important law. This will save the expense of people who have relatives who become incapacitated. With a durable power of attorney, they are able to deal without the tremendous expense of a conservatorship.

PROPONENTS: Doug Olson, of the State of Montana Seniors' Office, presented written testimony in support of the bill (Exhibit 1).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Ramirez stated he had some written material from the Commission of Uniform Laws if anyone wanted to see it.

Hearing on HB 609 was closed.

ACTION ON HB 609: Senator Pinsoneault moved HB 609 be recommended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HB 541: Representative Paula Darko, sponsor of HB 541, testified this bill was submitted at the request of several district court judges (see correspondence regarding bill request, Exhibit 2). What this bill says is any person who multiplies legal proceedings is responsible for the payment of costs. There were questions in the House committee that the court would invoke this reprimand. There is some federal case law cited in the material provided to the committee.

PROPONENTS: None.

a theme to their interview. They just put them all together so that the total picture looked bad for General Westmoreland. Mr. Loendorf stated all he had to do was show malice. Senator Towe asked if we should preclude somebody who has been defamed. Mr. Loendorf responded we have always done that with respect to radio broadcasters. Senator Towe stated that is a pretty significant exception to the defamation statute. With television, you can splice things together. Senator Towe stated he is not sure it's good for radio, but he has even more concerns with television. Mr. Loendorf responded that possibility is there, and there is nothing he can do to remove it. It is better to allow free speech than to put clamps on them that would be less than a showing of malice.

CLOSING STATEMENT: None.

Hearing on HB 722 was closed.

ACTION ON HB 310: Proposed amendments were distributed to the committee (Exhibit 5). Mr. Petesch explained the change from yesterday is in amendment No. 4, and this provides that the order would be immediately reviewable by the judge at chambers, and any case in which an order has been issued would be removable on filing of a notice of appeal. Senator Mazurek stated the effect would be to reinsert the justices of the peace. Senator Towe thought that was great. Now it makes good sense, addresses the question, and gives adequate protection. Now, you can show up in the district judge's chambers and have authority to do something. Senator Mazurek asked if they saw a potential for abuse here. One side will use this to gain an advantage in the custody problem. Senator Towe responded that is what worries him about throwing this on the justices of the peace who have no conception about this type of things but now you can go to the district court. Senator Daniels stated that should be confined to where there is real physical abuse. Senator Mazurek wondered if threat should be taken out. Senator Towe agreed. Senator Blaylock stated speaking as a non-lawyer, if it is a really big guy and he is threatening to beat up a small woman, that could be pretty frightening. Senator Mazurek asked if we were going to give a restraining order when there is a mere threat. Senator Towe agreed with Senator Mazurek. In the situation where a party is about to get divorced and the wife decides she is going to get the kids so she figures all she has to do is get the justice of the peace to give her an order keeping him out of the house and then he will be so happy to get that taken care of, he will be willing to bargain. She won't let him in for his belongings until he agrees to give her custody of the kids. Senator Pinsoneault commented there are too many lawyers around the committee table. What we are basically saying is if you come in with a black eye and a bleeding nose, there is no question a restraining order is appropriate. Maybe what they are suggesting is a possibility. The

justice of the peace knows these fellows and knows what has been going on. He is going to use commonsense. He does not believe the justices of the peace will issue restraining orders arbitrarily. After the damage is done, it's done, so you don't need a restraining order. Senator Yellowtail agreed with Senator Pinsoneault that performance is worth the consideration. In the case just described, if you place the language in about the district judges, any disadvantage has been overturned. Senator Towe stated on the other side of the coin, you might have someone who is threatened each time the guy comes home but she can't produce any bruises. Senator Yellowtail moved adoption of the amendments. The motion carried with Senator Mazurek voting in opposition. Senator Pinsoneault asked if it went too far. Senator Daniels thought it went pretty far. It provides a method of abusing it, but like Senator Pinsoneault says, you have the justices of the peace who know these things. Senator Mazurek commented that might be true in small areas, but not in large areas like Helena. Senator Towe moved HB 310 be amended as follows:

Page 5, lines 3 and 4.
Following: "INJURY" on line 3
Strike: remainder of line 3 through "INJURY" on line 4

Senator Yellowtail asked if by doing that we say the individual must actually suffer abuse for a temporary restraining order to be issued, and if that is the case, he does not think it is conscionable. Senator Mazurek pointed out that is the law now. Senator Yellowtail responded then we should correct the situation. Senator Brown stated this bill includes the justices of the peace now where the existing law doesn't. Maybe this is something that ought to be addressed on its merits in a separate piece of legislation. Are you extending some further jurisdiction in the small areas? When you get into threat, you are giving them more things to worry about. Senator Yellowtail stated he had difficulty separating the issue. The issues are one and the same. This bill hopes to prevent actual abuse. Senator Mazurek stated it was presented because someone needs immediate attention. Evidence of someone's having been beaten in the past should not mean anything. Senator Towe stated the people who come in are generally scared to death because their husbands have threatened to use a weapon, but they are just terrified. Senator Pinsoneault stated he could see a situation where a judge has a distraught spouse and says my husband has threatened to kill me if something isn't done. He may get some input from the other spouse. Senator Mazurek reminded the committee of Senator Regan's bill where we have situations where arrests can take place in the household. You couldn't get a restraining order on the basis of a threat, but you can call the sheriff to make an arrest. The motion to amend carried with Senators Pinsoneault, Shaw, and Yellowtail voting in

opposition. Senator Towe moved HB 310 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 781: Senator Daniels moved HB 781 be recommended BE NOT CONCURRED IN. He reasoning was these are misdemeanors, and you can't carry these things on forever. They are not felonies. If the prosecution and the judge don't get along, that is tough. Senator Pinsoneault stated not all of our justices of the peace have legal training, and the state should have a right to appeal from the decision, and he doesn't have that much problem. The motion failed (see roll call vote attached as Exhibit 6). Senator Pinsoneault moved HB 781 be recommended BE CONCURRED IN. The motion carried (see roll call vote attached as Exhibit 7).

ACTION ON HB 476: Senator Blaylock stated the argument was to get these out of the district court because the judge is already too busy and district judges are too light on third offense DUIs. Senator Daniels moved HB 476 be recommended BE CONCURRED IN. The motion carried with Senator Crippen moving in opposition.

ACTION ON HB 341: A proposed amendment was distributed to the committee (Exhibit 8). Senator Towe moved adoption of the amendment. Mr. Petesch explained this would require a fraudulent intent to defeat the lien or to defraud the payee of the check. Senator Towe stated his concern was when there is no good faith dispute, it does not cover all of the amendments, the the amendment covers it. The motion carried unanimously. Senator Daniels moved HB 341 be recommended BE NOT CONCURRED IN AS AMENDED. He thought you were just throwing a lot of things on a county attorney. He has enough to do without all of the commercial transactions. Senator Mazurek stated the idea is to take it off the county attorney and make it a civil offense. Senator Blaylock moved as a substitute motion that HB 341 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senators Daniels and Shaw voting in opposition.

ACTION ON HB 579: Senator Towe stated there was discussion about what confirmation means on page 2. Senator Mazurek responded they were trying to eliminate the necessity of a confirmation in every instance. Senator Towe stated he was anxious we have something to show that if they do it by telephone, they have something in the file to go back to. Senator Mazurek commented that would be appropriate for rules. Senator Daniels moved HB 579 be amended as follows:

Statement of Intent.
Page 1, line 18.
Following: line 17

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 02/18

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

AMENDMENTS TO HB 310:

1. Page 7, line 4.
Following: "40-4-106"
Insert: ", and uniform sample affidavits and orders of inability to pay filing fees or other costs"

2. Page 7, line 5.
Following: "order"
Insert: "and the inability to pay filing fees order"

3. Page 7, line 12 through page 8, line 6.
Reinsert: stricken language
Renumber: subsequent sections

4. Page 8, line 7.
Following: line 6
Insert: "Section 7. Review or removal -- district court. (1) An order issued by a municipal court or justice court pursuant to 40-4-106(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court or justice court made pursuant to 40-4-106(3).

(2) Any case in which an order has been issued by a municipal court or justice court pursuant to 40-4-106(3) may be removed to district court upon filing of a notice of removal."
Renumber: subsequent sections

5. Page 8. line 9.
Following: "judge"
Insert: "justice of the peace, or municipal court judge"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 032185
BILL NO. HB 310

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 310

third reading copy (blue color)

(Senator Towe)

ABUSED HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY RESTRAINING ORDER

Respectfully report as follows: That HOUSE BILL No. 310

be amended as follows:

1. Page 5, lines 3 and 4.
Following: "INJURY" on line 3
Strike: remainder of line 3 through "INJURY" on line 4

2. Page 7, line 4.
Following: "40-4-108"
Insert: ", and uniform sample affidavits and orders of inability to pay filing fees or other costs"

3. Page 7, line 5.
Following: "order"
Insert: "and the inability to pay filing fees order"

~~DO PASS~~

~~DO NOT PASS~~

CONTINUED

Chairman.

4. Page 8, line 7.
Following: line 6
Insert: "NEW SECTION. Section 6. Jurisdiction and venue. (1) District courts, municipal courts, and justices' courts have concurrent jurisdiction to hear and issue orders under 40-4-106(3).

(2) The municipal judge or justice of the peace shall, on motion, suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties. From the time of the certification of such pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced therein.

(3) An action brought under 40-4-106(3) may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse."
Renumber: subsequent sections

5. Page 8, line 7.
Following: line 6
Insert: "NEW SECTION. Section 7. Review or removal -- district court. (1) An order issued by a municipal court or justice court pursuant to 40-4-106(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court or justice court made pursuant to 40-4-106(3).

(2) Any case in which an order has been issued by a municipal court or justice court pursuant to 40-4-106(3) may be removed to district court upon filing of a notice of removal."
Renumber: subsequent sections

6. Page 8, line 9.
Following: "judge"
Insert: "justice of the peace, or municipal court judge"

CONTINUED

March 21 19 85

HOUSE BILL NO. 510

7. Page 9, line 2.
Following: "through"
Strike: "7"
Insert: "8"

8. Page 9, line 4.
Following: "Section"
Strike: "8"
Insert: "9"

AND AS AMENDED

BE CONCURRED IN

Senator Joe Mazurek, Chairman

HOUSE BILL NO. 310

INTRODUCED BY WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ABUSED FAMILY OR HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY RESTRAINING ORDERS; MAKING VIOLATION OF AN ORDER A CRIMINAL OFFENSE; DIRECTING THE ATTORNEY GENERAL TO PREPARE AND DISTRIBUTE FORMS AND INSTRUCTIONS FOR RESTRAINING ORDERS; AMENDING SECTIONS 27-19-201, 27-19-315, 27-19-316, AND 40-4-106, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-19-201, MCA, is amended to read:

"27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear that the applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it shall appear during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears the applicant has suffered or may suffer physical abuse ~~by a spouse~~ under the provisions of 40-4-106."

Section 2. Section 27-19-315, MCA, is amended to read:

"27-19-315. When restraining order may be granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or his attorney could be heard in opposition; and

(2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his

claim that notice should not be required."

Section 3. Section 27-19-316, MCA, is amended to read:

"27-19-316. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must:

(1) be endorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why such injury is irreparable and why the order was granted without notice; and

(4) except as provided in 40-4-106, expire by its terms within such time after entry, not to exceed 10 days, as the court or judge fixes."

Section 4. Section 40-4-106, MCA, is amended to read:

"40-4-106. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and

the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; ~~and~~ AND

~~(e) ordering a party to pay the other party's reasonable attorney fees incurred under this section; and~~

~~(e)~~(f)(E) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal

separation by filing a verified petition:

(a) alleging ~~OR--THREATENING~~ physical abuse, HARM, OR BODILY INJURY ~~OR-THE-THREAT--OF--PHYSICAL--ABUSE,--HARM,--OR BODILY--INJURY~~ against the petitioner~~,-including-attempting to-cause-or-causing-bodily-injury-or-causing-the--petitioner to--engage--in--involuntary--sexual--relations--by-threat-or force,~~ by a ~~spouse~~ family or household member; and

(b) requesting ~~injunctive~~ relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208. Persons who may request relief under this subsection include spouses, former spouses, ~~adult--persons--related--by-blood-or-marriage,~~ and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the

temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208; and

(c) ~~terminates--when--the--final--decree-is-entered-or when-the-petition-for-dissolution--or--legal--separation--is voluntarily-dismissed.~~ TERMINATES UPON ORDER OF THE COURT OR WHEN A FINAL DECREE IS ENTERED OR WHEN A PETITION FOR DISSOLUTION OR LEGAL SEPARATION IS VOLUNTARILY DISMISSED; AND

(D) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under [section ~~8~~ 7 9]."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

NEW SECTION. Section 5. Forms -- distribution --

filing. The attorney general shall prepare UNIFORM SAMPLE instructions and petition and order forms necessary for allowing an applicant to obtain a temporary restraining order under 40-4-106 AND UNIFORM SAMPLE AFFIDAVITS AND ORDERS OF INABILITY TO PAY FILING FEES OR OTHER COSTS. The attorney general shall distribute SAMPLES OF the restraining order AND THE INABILITY-TO-PAY-FILING-FEES ORDER forms to the clerk of the district court in each county and to justice and municipal courts. The clerk of the district court, justices of the peace, and municipal courts shall make ~~the~~ forms available to the public at no charge~~,--and-no filing-fee-may-be-charged-for--a--petition--or--order--filed pursuant-to-40-4-106-and-{section-6}~~.

~~NEW-SECTION.--Section-6.--Jurisdiction----and----venue. {1}--District-courts,-municipal-courts,-and-justices'-courts have-concurrent-jurisdiction-to-hear-and-issue-orders--under 40-4-106{3}.~~

~~{2}--The--municipal-judge-or-justice-of-the-peace-shall on-motion-suspend-all-further-proceedings-in-the-action--and certify--the--pleading--and--any--orders-to-the-clerk-of-the district-court-of-the-county-where-the-action-was--begun--if an-action-for-declaration-of-invalidity-of-a-marriage,-legal separation,--or-dissolution-of-marriage,-or-child-custody-is pending--between--the--parties.--From--the---time---of---the certification-of-such-pleadings-and-any-orders-to-the-clerk,~~

~~the-district-court-has-the-same-jurisdiction-over-the-action as-if-it-had-been-commenced-therein.~~

~~{3}--An--action--brought-under-40-4-106{3}-may-be-tried in-the-county-in-which-either-party-resides-or-in-which--the physical-abuse-was-committed.~~

~~{4}--The-right-to-petition-for-relief-may-not-be-denied because-the-plaintiff-has-vacated-the-residence-or-household to-avoid-abuse.~~

NEW SECTION. SECTION 6. JURISDICTION AND VENUE. (1) DISTRICT COURTS, MUNICIPAL COURTS, AND JUSTICES' COURTS HAVE CONCURRENT JURISDICTION TO HEAR AND ISSUE ORDERS UNDER 40-4-106(3).

(2) THE MUNICIPAL JUDGE OR JUSTICE OF THE PEACE SHALL, ON MOTION, SUSPEND ALL FURTHER PROCEEDINGS IN THE ACTION AND CERTIFY THE PLEADING AND ANY ORDERS TO THE CLERK OF THE DISTRICT COURT OF THE COUNTY WHERE THE ACTION WAS BEGUN IF AN ACTION FOR DECLARATION OF INVALIDITY OF A MARRIAGE, LEGAL SEPARATION, OR DISSOLUTION OF MARRIAGE, OR CHILD CUSTODY IS PENDING BETWEEN THE PARTIES. FROM THE TIME OF THE CERTIFICATION OF SUCH PLEADINGS AND ANY ORDERS TO THE CLERK, THE DISTRICT COURT HAS THE SAME JURISDICTION OVER THE ACTION AS IF IT HAD BEEN COMMENCED THEREIN.

(3) AN ACTION BROUGHT UNDER 40-4-106(3) MAY BE TRIED IN THE COUNTY IN WHICH EITHER PARTY RESIDES OR IN WHICH THE PHYSICAL ABUSE WAS COMMITTED.

(4) THE RIGHT TO PETITION FOR RELIEF MAY NOT BE DENIED BECAUSE THE PLAINTIFF HAS VACATED THE RESIDENCE OR HOUSEHOLD TO AVOID ABUSE.

NEW SECTION. SECTION 7. REVIEW OR REMOVAL -- DISTRICT COURT. (1) AN ORDER ISSUED BY A MUNICIPAL COURT OR JUSTICE COURT PURSUANT TO 40-4-106(3) IS IMMEDIATELY REVIEWABLE BY THE JUDGE OF THE DISTRICT COURT AT CHAMBERS UPON THE FILING OF A NOTICE OF APPEAL. THE DISTRICT JUDGE MAY AFFIRM, DISSOLVE, OR MODIFY AN ORDER OF A MUNICIPAL COURT OR JUSTICE COURT MADE PURSUANT TO 40-4-106(3).

(2) ANY CASE IN WHICH AN ORDER HAS BEEN ISSUED BY A MUNICIPAL COURT OR JUSTICE COURT PURSUANT TO 40-4-106(3) MAY BE REMOVED TO DISTRICT COURT UPON FILING OF A NOTICE OF REMOVAL.

NEW SECTION. Section 8. Registration of orders. (1) The clerk of court, ~~justice of the peace, or municipal court judge~~, JUSTICE OF THE PEACE, OR MUNICIPAL COURT JUDGE shall, within 24 hours of receiving proof of service of an order under 40-4-106, mail a copy of the order or any extension, modification, or termination thereof along with a copy of the proof of service to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, USING AN EXISTING SYSTEM FOR WARRANT VERIFICATION, to ensure that peace officers at the scene of

an alleged violation of a protective order are informed of the existence and terms of such order.

NEW SECTION. Section 9. Misdemeanor. (1) A person commits the offense of violation of a protective order if he, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-106.

(2) A person convicted of violation of a protective order shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

NEW SECTION. Section 10. Codification instruction. (1) Sections 5 through ~~7~~ 8 are intended to be codified as an integral part of Title 40, chapter 4.

(2) Section ~~8~~ 9 is intended to be codified as an integral part of Title 45.

-End-